

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

3 SYNGENTA CROP PROTECTION, LLC.,)
4)
5 Plaintiff,) Civil Action
6) No. 15CV274
7 vs.)
8)
9 WILLOWOOD, LLC, WILLOWOOD) September 11, 2017
10 USA, LLC., WILLOWOOD)
11 AZOXYSTROBIN, LLC, and)
12 WILLOWOOD LIMITED,)
13 Defendants.)
14)
15

16 TRANSCRIPT OF JURY TRIAL
17 BEFORE THE HONORABLE CATHERINE C. EAGLES
18 UNITED STATES DISTRICT JUDGE

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1 P R O C E E D I N G S

2 (Proceedings commenced at 8:45 a.m.)

3 THE COURT: Good morning. Before we get going, if I
4 can -- the jury is not present the record will reflect.5 If I can ask Ms. Sanders, how much time has Syngenta
6 used of their 15 hours?

7 THE CLERK: Eleven hours and 24 minutes.

8 THE COURT: And Willowood?

9 THE CLERK: Seven hours and 53 minutes.

10 MR. LEVINE: Seven what?

11 THE CLERK: Fifty-three.

12 THE COURT: So we should finish the evidence tomorrow
13 because you all are going to run out of time.14 MR. LEVINE: Your Honor, we have calculations that we
15 can provide as well, but I think that includes the opening
16 statements because we have our time just under 11 hours.17 THE COURT: I don't think so. I told her not to
18 include the opening statements so -- this is about 19 1/2
19 hours, which is consistent with 3 1/2 days of trial time
20 because we started the evidence Tuesday afternoon, right?

21 MR. LEVINE: Right.

22 THE COURT: Anyway, that's why I wanted to put it on
23 the record. You all can look at your notes. If you want to
24 discuss that, we can talk about it, but everybody -- we should
25 finish tomorrow because everybody is going to run out of time

1 even if they're wrong 15 minutes either way.

2 MR. TILLER: In that regard, Your Honor, I just want
3 to -- before we start arguing, a couple things we are going to
4 do today which we think significantly speeds things along.

5 THE COURT: All right.

6 MR. TILLER: One, the deposition of Mr. Wu, there
7 was -- as I'm sure you've heard now, he does not speak English.
8 There was a translator there. We plan on reading the
9 deposition to avoid the 45 minutes of translation that's going
10 back and forth, which -- since nobody, I presume, is going to
11 be understanding what's happening in Chinese anyway.

12 THE COURT: I assume not.

13 MR. TILLER: I presume that that will make things
14 faster.

15 Two, with Mr. Shaojun, who we have all been referring
16 to as SSJ, we would like to notify the Court he is -- for what
17 I'll call simple questions and answers, he's going to testify
18 in English and where needed -- I think you'll see where needed
19 he'll go to the translator.

20 THE COURT: All right. So you have an interpreter
21 present if needed.

22 MR. TILLER: We do. And it will be needed when we
23 get to sort of longer, open-ended questions.

24 THE COURT: Well, I have a fair amount of experience
25 with interpreters in criminal cases, unfortunately, so I do --

1 even when an interpreter is used, my experience is it works
2 better if the questions are not compound and do not have a lot
3 of clauses and -- you know, if you can go -- I'm talking to
4 both sides. Just, you know, it really increases clarity for
5 everybody's sakes.

6 MR. TILLER: We've done our best to do exactly that.

7 THE COURT: Great. Thank you.

8 So we have about 15 minutes to deal with any
9 arguments on the motions. I did read Syngenta's brief over the
10 weekend. Usually the Plaintiff doesn't get a directed verdict
11 at the close of the Plaintiff's evidence. Usually the
12 Defendant gets a chance to respond. I'm a little flummoxed, I
13 have to say, but if somebody wants to address the propriety of
14 that, go ahead.

15 MS. BALTZER: Well, Your Honor, we think the state of
16 the evidence now is very different compared to when we filed
17 our motion for summary judgment this past winter and when Your
18 Honor was -- particularly for Willowood Limited's infringement
19 of the compound patents, which is a motion I would like to
20 address today. I think the papers stand on their own with
21 respect to the other grounds.

22 THE COURT: Can you just address the -- why does
23 Willowood not get a chance to rebut your evidence?

24 MS. BALTZER: We think the evidence shows no
25 reasonable jury at this point could find --

1 THE COURT: Of course, but they haven't presented
2 their evidence. I mean, why do they not get to present their
3 evidence. That's what I am trying to ask you. That has
4 nothing to do with this case. Just in general, doesn't the
5 Defendant get to rebut your evidence? Why do you get to win
6 without them getting a chance?

7 MS. BALTZER: At this point we think the evidence
8 shows, even if they can rebut and show that Willowood Limited's
9 sale of azoxystrobin technical to Willowood USA occurred in
10 China or some other place as well, that doesn't limit the -- it
11 doesn't need to occur in one location. It can occur in two.
12 We don't think any evidence that they can present at this point
13 or rebut could actually show that the sale didn't occur within
14 the United States. Whatever evidence that they can present, it
15 can't rebut what we've already presented.

16 THE COURT: Okay. Well, I don't understand that. I
17 mean, they may or may not rebut it, but I don't -- I'm
18 unfamiliar with giving the Plaintiff a directed verdict without
19 giving a chance to the Defendant. Did you -- are there cases
20 where you've seen that done before?

21 MS. BALTZER: Yes. I don't know if I have any at
22 hand at the moment.

23 THE COURT: I mean, isn't just the mere fact that it
24 says FOB China enough to rebut it?

25 MS. BALTZER: Well, even if they could show that it's

1 FOB China and occurs in a different location, the case law
2 shows that a sale -- that it can't be limited to one location.
3 It can occur in two locations. The evidence we presented shows
4 that it occurs in the United States regardless and we're
5 relying on Mr. Heinze's testimony to show this. Mr. Heinze has
6 already testified. He's not going to be testifying again in
7 Willowood's case in chief.

8 THE COURT: Okay. I don't want to cut you off in
9 making your argument with my procedural question -- not
10 procedural, but larger question -- so go ahead.

11 MS. BALTZER: So in particular, I would like to focus
12 on Willowood Limited's sale of azoxystrobin technical to
13 Willowood USA in 2013. We have a vastly different record, as I
14 mentioned, compared to when we moved for summary judgment on
15 this issue this past March.

16 As we saw this past week, there is an agreement
17 between Willowood Limited and Tai He showing that in -- that
18 in 2013 when they entered into this agreement Willowood Limited
19 specifically stated that it will apply for a registration with
20 the US EPA, and Willowood Limited also stated and represented
21 --

22 THE COURT: It just says "Willowood."

23 MS. BALTZER: The agreement at the top is entered
24 into between Tai He and Willowood Limited. That's the only
25 party with Tai He to that agreement. At the end of the

1 agreement, the only signature block that exists, in addition to
2 Tai He, is Willowood Limited signed by Vijay Mundhra, who's the
3 managing director of Willowood Limited. That's the only
4 Willowood entity that entered into that agreement, and in that
5 Willowood Limited states that it's desirous of developing
6 demand for and selling azoxystrobin in the United States.
7 Willowood Limited was the only party who entered into that
8 agreement.

9 When Willowood Limited shipped that azoxystrobin
10 technical to Willowood USA in 2013, it knew what was going to
11 happen with that azoxystrobin technical. It had an intention
12 to do the formulation testing, do the testing with ARC, to
13 build the EPA registrations.

14 And when we look at the case law on this issue,
15 particularly SEB v. Montgomery Ward, the Federal Circuit said:
16 When factors indicate an intention to sell product -- their
17 shipped product within the United States, having a shipment be
18 FOB abroad does not limit or preclude liability under 271(a).
19 Here we have a clear intention of Willowood Limited wanting to
20 sell and bring infringing product into the United States.

21 In addition, we also heard testimony from Mr. Heinze
22 last week, who is the only -- who is not going to be testifying
23 during Willowood's case in chief this week, that Willowood --
24 there is an agreement between Willowood Limited and Willowood
25 USA in which Willowood USA designates the place that

1 azoxystrobin technical will be shipped and that Willowood
2 Limited ships this into the US. Mr. Heinze testified that this
3 agreement was in place in 2013. The same terms govern the
4 shipment of azoxystrobin technical in 2013 as when that
5 agreement was entered into in November 2014, and Mr. Heinze
6 specifically testified that Willowood Limited controls and does
7 all of the coordinating of the shipment of that azoxystrobin
8 technical into the US, and that in 2013 Willowood Limited
9 shipped the azoxystrobin technical to Willowood USA here in the
10 United States. This qualifies as an infringement under 35
11 U.S.C. 271(a) as it's an importation of azoxystrobin technical
12 from Willowood Limited into the United States.

13 THE COURT: All right. Thank you.

14 For Willowood.

15 MR. TILLER: Does Your Honor want me to address that
16 issue?

17 THE COURT: You can address it if you want or you can
18 address your own motion. We've got 10 minutes.

19 MR. TILLER: I'll briefly address that issue, Your
20 Honor. I don't think that the status of where we are today is
21 any different than where we were on summary judgment. I think
22 the documents very clearly --

23 THE COURT: Say again.

24 MR. TILLER: I'm sorry. Let me move this.

25 THE COURT: Thank you.

1 MR. TILLER: I think the invoices very clearly say
2 that the delivery was FOB China. I think Mr. Heinze testified
3 that it is Willowood USA that handles everything in the US. It
4 is Willowood USA that directs Willowood Limited to -- where to
5 send it, how to send it, when to send it, for -- how much to
6 send. Thereafter, Willowood Limited delivers to the port and
7 at that point Willowood USA takes over and that -- I -- we
8 argue, does not constitute a sale in the United States.

9 THE COURT: All right.

10 MR. TILLER: As to our motions, again, I realize the
11 burden of proof shifts, Your Honor, but because of some
12 uncertainty about the procedural issues, we just want to make
13 sure that we put on the record our motion for judgment as a
14 matter of law as to the '761 patent. Second --

15 THE COURT: Well, I don't think they tried to prove
16 infringement of that given the shift of the burden of proof. I
17 assume -- in fact, I asked about Dr. Fortunak and, you know,
18 they basically said -- so I understand your argument. For the
19 record, that's denied.

20 MR. TILLER: Thank you, Your Honor.

21 THE COURT: That's okay.

22 MR. TILLER: As to the damages issue, specifically
23 Dr. Wilner's testimony, as Your Honor is well aware, under
24 Federal Rule of Evidence 702 experts may offer opinions only if
25 they are based on sufficient facts or data and are products of

1 reliable principles and methods; and as Your Honor knows from
2 cases that we put into our motion to exclude -- Sunlight
3 Saunas, 427 F. Supp. 2d 1022; Celebrity Cruises, 434 F. Supp.
4 2d 169; Silicon Knights, 2011 WL 67448518, and others -- that
5 data must be reliable and simply relying on historically
6 inaccurate budgets does not suffice.

7 THE COURT: Can I just -- I just want to be sure I
8 understand your argument. Your argument is that you are asking
9 me to remove the issue of lost profit damages from the jury
10 because Dr. Wilner's testimony is insufficient to support it.

11 MR. TILLER: Correct. And that is the only evidence
12 of lost profits that was put in by Syngenta, so that is part of
13 the argument, as you saw, in the five years leading up to 2014
14 when the allegedly infringing activity occurred.

15 First of all, Dr. Wilner did not look at all of the
16 available budgets available to him. There is clear and
17 uncontradicted testimony that budgets were made for
18 azoxystrobin going back to 1997, budgets going back to
19 mesotrione to 2000 or 2001 Mr. Cecil testified; and none of
20 that information was reviewed or even presented for Willowood
21 to view. For the data that was admitted, with regards to the
22 historical accuracy or, I would argue, inaccuracy of Syngenta's
23 budgeting process, it is very clear that those budgets just
24 were not accurate; and while Dr. Wilner provided excuses for
25 those budgets, that does not change the fact that the budgeting

1 process was historically wildly inaccurate.

2 In addition to that issue, Your Honor -- and I think
3 we are in a different position now from where we were in the
4 motion to exclude back in June, which is now we know exactly
5 what Dr. Wilner did and, in fact, didn't do with regard to
6 verifying Syngenta's budgets. There is a great deal of case
7 law that says when an expert relies on information provided to
8 him or her by a party or counsel, he or she must independently
9 verify that information before utilizing it in his or her
10 calculations. That is from State Farm Fire & Casualty, 980 F.
11 Supp. 2d 1031; Victory Records, 2011 WL 382743; Park versus
12 El Paso Board of Realtors, 764 F.2d 1053, as well as many
13 others.

14 In addition, though, I would like to draw the Court's
15 attention to a case in particular, TK-7 Corporation versus The
16 Estate of Barbouti, B-A-R-B-O-U-T-I. It is a Tenth Circuit
17 case, 993 F.2d 722. Your Honor, Willowood contends that this
18 case is really on all fours with what we have here.

19 In that particular case, the expert -- the damages
20 expert relied on projections prepared by someone else and the
21 Court said that that opinion must be excluded because the
22 expert did not examine the methods and the data underlying
23 those projections, and the Court held that the rationale of
24 Rule 703 was not satisfied because the expert failed to
25 demonstrate any basis for concluding that the other person's

1 projections of a subjective financial prediction -- or that the
2 projections were reliable because the expert only --
3 essentially only said that they are reliable because they were
4 the opinion of someone he believed to be an expert in the field
5 who had a financial interest in making sure that those
6 predictions were accurate. The expert's lack of familiarity
7 with the methods and the reasons underlying the projections
8 precluded any assessment of the validity of those projections.

9 As you heard, while Dr. Wilner did find out and
10 examined the allegedly exacting process of Syngenta, what we
11 heard about that process was the product lead comes up with a
12 budget. The product lead then goes to the Regional Operating
13 Committee; and those 15 to 20 people, allegedly with 10-plus
14 years of experience each, vet that information, test it, and
15 question, and then that -- whatever comes out of that committee
16 goes to the Central Steering Committee.

17 THE COURT: You need to wrap it up just because we'll
18 have the jury here soon. I'm not -- I apologize. We just
19 don't have very much time.

20 MR. TILLER: I understand, Your Honor, and I have got
21 about 60 seconds.

22 THE COURT: All right.

23 MR. TILLER: But what was important -- and I think
24 you heard it very clearly -- is Dr. Wilner did not know, does
25 not know what data was evaluated by these committees in each

1 year or how that data was weighted. What if, for example, the
2 project lead came out with one budget, the Regional Operating
3 Committee said, "No, we think that's wrong," came up with
4 another budget, and the Central Steering Committee came up with
5 yet another budget?

6 Dr. Wilner has an obligation to evaluate that
7 information: Why were budgets rejected, why were budgets
8 changed, what was done. And we should have the opportunity --
9 Willowood should have the opportunity to question that. We
10 have no way of challenging the accuracy, veracity or
11 credibility of any of those projections; and for those reasons,
12 we believe those opinions should be excluded.

13 Thank you.

14 THE COURT: All right. Any -- you've got a couple of
15 minutes.

16 MR. SANTHANAM: Yes, briefly, Your Honor. I'll keep
17 it very brief.

18 So Mr. Tiller said that -- you know, that there were
19 variations in the budgets that Dr. Wilner did not address. In
20 fact, he did address it. He went year by year explaining from
21 his own experience as an economist working in the agricultural
22 field, particularly as an economist that's worked with crop
23 insurance, has told us year-by-year explanations for why there
24 were budget variations. If they had questions that they had
25 and wanted to pose to Dr. Wilner, they had the opportunity.

1 They also had the opportunity to pose those questions to
2 Mr. Cecil, Mr. Fisher, and Dr. Wichert. If they chose not to
3 do that, that's not a reason for granting judgment as a matter
4 of law.

5 We also except to the application of the Barbouti
6 case. That case, as according to rule with counsel, in their
7 view, suggests that the expert in that case did not verify the
8 budgets. That's not what happened here. We heard extensive
9 testimony about the budgetary process, and it's not just a
10 process that -- where project leads prepare numbers and it's
11 approved. We heard testimony that it's a 14-month process and
12 Dr. Wilner didn't just take that budget or those budgets. He
13 actually independently verified it, as he testified. He said
14 that he did analyzes to corroborate his analysis. He looked at
15 reality. He said he had the answer key looking backwards in
16 time and explained that there was a 12- to 15-month head start,
17 just as the reality shows. He also looked at the but-for world
18 and how profits decrease, just as he would expect, and he
19 performed all of these corroborative analyses that are not
20 found in the Barbouti case that Willowood provides.

21 Beyond that, Your Honor -- just for those reasons, we
22 would except to the application of judgment as a matter of law.

23 THE COURT: All right. Well, you all can renew it at
24 the close of all of the evidence, but I'm going to deny it at
25 this point. I'll go back and -- I can't remember this Barbouti

1 case, if it was cited before or not, so I'll have to go back
2 and look at it again, which I will do between now and the close
3 of all the evidence just to be sure I still feel comfortable
4 with letting the jury decide it, but at the moment it seems to
5 me that the budgets can't be looked at in a vacuum because the
6 witness didn't look at them in a vacuum. Willowood made a
7 number of pretty good points in cross-examination of the
8 expert, some of which you've repeated here, but those seem to
9 me, at the moment at least, to be for the jury to resolve.

10 All right. We'll start at 9:15. It looks like the
11 rain from Irma is going to start this afternoon, but maybe the
12 winds won't get too bad. We won't -- I hope we won't have to
13 stop early, but if -- you know, I'm going to keep an eye on the
14 forecast because if it does get really, really windy, I -- you
15 know, I may let the jury go home. They do have to travel, some
16 of them, quite a distance. I don't think any of them are real
17 far way on this jury, but I know one of them lives in King. So
18 you know, they do have 45, 50 minutes, some of them, to drive.
19 If it's really, really windy or if it's about to be, I may let
20 them go on home a little bit early, but hopefully we won't have
21 to do that.

22 Any other logistics before we take a short recess in
23 anticipation of the jury's arrival?

24 MR. LEVINE: Yes, Your Honor. We have the transcript
25 for purposes of the record of the Middione deposition video

1 that was played. We've marked it as Plaintiff's Exhibit 502
2 and move for the admission of it for purposes of the record.

3 THE COURT: All right. Plaintiff's Exhibit 502, the
4 Middione deposition will be -- I'm admitting it into evidence
5 just for making the record complete. It will not go back to
6 the jury during deliberations.

7 MR. LEVINE: Similarly, the Brad Reichman deposition
8 that was read has been read as Plaintiff's Exhibit 503 and we
9 move for its admission similarly.

10 THE COURT: All right. That will be admitted under
11 the same terms.

12 MR. LEVINE: Lastly, for the record, there was a
13 video clip impeachment during Mr. Heinze's testimony. The
14 question and answer that were shown during the video clip we
15 have marked as Plaintiff's Exhibit 504. Similarly for purposes
16 of the record, not going back to the jury, we move for its
17 admission.

18 THE COURT: It will be admitted under those same
19 terms. Thank you.

20 MR. LEVINE: Thank you.

21 THE COURT: You checked with the clerk? All of your
22 exhibits got admitted that you --

23 MR. LEVINE: Yes.

24 THE COURT: Okay. I'm usually pretty understanding
25 about housekeeping oversights on exhibits, but we do need to

1 get all of that cleared up before the case gets to the jury.

2 All right. Good. Anything else for the Plaintiff?

3 No. For the Defendant?

4 MR. TILLER: No, Your Honor.

5 THE COURT: We'll be in recess for five minutes.

6 (At 9:10 a.m., break taken.)

7 (At 9:15 a.m., break concluded.)

8 THE COURT: All right. Do we have all the jurors
9 here?

10 THE CLERK: Yes, Ma'am.

11 THE COURT: Are we ready for them? You can bring
12 them in. I believe we were on cross-examination, right?

13 MR. COUGHLIN: Yes, Your Honor.

14 (Jury is present at 9:19 a.m.)

15 THE COURT: Good morning. I hope everybody enjoyed
16 the great weather this weekend, since it's about to change.
17 I'll be keeping a watch on the weather today. If it looks like
18 the winds are going to get up pretty high late this afternoon,
19 you know, I'll let you all go in time to avoid that, if it's
20 going to happen before we get done, or if it's going to be
21 particularly bad. But we're all hoping to get through the
22 evidence here today, probably tomorrow or early Wednesday so,
23 you know, I don't want to do that unless we have to. But I
24 will be watching it for you. And if anybody has anything
25 happen, you know, at home about the weather, just, as I say,

1 let Ms. Sanders know.

2 I believe we were in cross-examination of Ms. Kay.

3 So, Mr. Coughlin, you may continue.

4 MR. COUGHLIN: Thank you, Your Honor. Good morning,
5 Ms. Kay.

6 THE WITNESS: Good morning.

7 JANELLE KAY,

8 DEFENDANT'S WITNESS, PREVIOUSLY SWORN,

9 CROSS-EXAMINATION (CONT'D)

10 BY MR. COUGHLIN:

11 Q. Ms. Kay, when we recessed your testimony on Friday
12 afternoon, we were discussing, I believe, Exhibit 41 in your
13 binder, that -- in which there was communications involving
14 Willowood and Dr. Tillman with regard to concerns about
15 Syngenta's process patents. Do you recall that?

16 A. I do. May I --

17 Q. Yes, please.

18 A. -- get that? Thank you.

19 Q. And do you recall that, in fact, after some inquiry,
20 Willowood reported back that all the manufacturers in China
21 with regard to azoxystrobin use the same process, and that it
22 was a very difficult process to avoid?

23 A. Yes.

24 Q. If you could turn -- I'm going to go through a couple more
25 e-mail strings related to this. If you could turn to Exhibit

1 42, which is the next tab in your binder. And if you look at
2 the end of Exhibit 42, which is the beginning of the string, do
3 you see that --

4 THE COURT: Mr. Coughlin?

5 MR. COUGHLIN: Yes, Your Honor.

6 THE COURT: If you could just slow down just a little
7 bit. It's early in the morning. I'm hearing a little bit
8 slowly, so start over again with your question.

9 MR. COUGHLIN: Yes, Your Honor.

10 BY MR. COUGHLIN:

11 Q. With regard to Exhibit 42, do you see that this an e-mail
12 string that starts trying to introduce Mr. Hayden, Willowood's
13 patent counsel, and Dr. Tillman to have discussions with regard
14 to Syngenta's process patents?

15 A. Yes, I see that.

16 Q. And if you could look at the second e-mail in the --
17 excuse me, the third e-mail in the string, do you see where
18 Mr. Hayden sends Dr. Tillman an e-mail in which he sets forth
19 three potential options with regard to altering the process for
20 manufacturing azoxystrobin?

21 A. Yes. I see that.

22 Q. And do you see that are three options laid out below that?

23 A. Yes.

24 Q. And at the end, do you see where it states that Mr. Hayden
25 says that the goal is to modify the process without changing

1 the impurity profile. Correct?

2 A. Yes, I see that.

3 Q. And that's because if an impurity profile is modified or
4 changed, that would result, perhaps, in not meeting the EPA's
5 requirement for substantial similarity to qualify for a prior
6 registration, is that correct?

7 A. It could, but it's not necessary that that would happen.

8 Q. Well, if you go back to the top of the e-mail, or if you
9 turn to the front of the exhibit, do you see where Dr. Tillman
10 responds to a followup inquiry from Mr. Hayden with regard to
11 whether -- what the response from the manufacturer was?

12 A. Which e-mail are you referring to, please?

13 Q. So I'm referring to -- at the top, correct.

14 THE COURT: Plaintiff's, which one?

15 BY MR. COUGHLIN:

16 Q. This is Plaintiff's 42. And the e-mail that's at the top
17 of the string, Dr. Tillman to Mr. Hayden.

18 A. Yes. June 17, 2:38?

19 Q. Correct.

20 A. Yes. I see that.

21 Q. And do you see, after reciting the response that she
22 received from the manufacturer, I want to focus on the last
23 paragraph. Do you see where Dr. Tillman says: I'm sure that
24 proposing any change to a manufacturing process might be easy
25 to agree on paper, but in reality, I would think that the

1 manufacturer would want to verify any change by running
2 experiments first on small scale, and then on a large scale to
3 see if the changes actually work and to give the desired
4 product. Is that correct?

5 A. Yes. That's what's written, yes.

6 Q. And so, if a manufacturer did change the process, they
7 would have to go through and test it, not only to figure out
8 whether they could manufacture it in a way to produce the
9 azoxystrobin, but they'd also have to determine whether or not
10 any changes in that process resulted in changes in the impurity
11 profile, correct?

12 A. Well, they would have seen if there was any changes to the
13 impurity profile, definitely.

14 Q. And the only way you could do that would be through a
15 5-Batch analysis testing, correct?

16 A. The only way to do that from an EPA perspective is through
17 a 5-Batch analysis, but you could certainly do non-GLP and
18 you can just test --

19 THE COURT: I'm sorry, what?

20 THE WITNESS: I'm sorry, non-GLP, non-good laboratory
21 practices. So it's just a test that is verifying that you have
22 what impurities that you're looking for.

23 BY MR. COUGHLIN:

24 Q. But for the EPA registrations, you'd have to do a 5-Batch
25 analysis, correct?

1 A. Yes. That's correct.

2 Q. Okay. And I believe you testified on Friday that Pyxis
3 submitted an application to amend Willowood's azoxystrobin
4 technical registration to change -- well, strike that.

5 The -- all of these e-mails were dated, and all of
6 these conversations that we've been discussing about concerns
7 with Syngenta's process patent were -- occurred before Pyxis
8 submitted to the EPA an application to register azoxystrobin
9 technical manufactured for Willowood by Tai He, correct?

10 A. Well, the filing was by Greenfield, and I did not look at
11 the date of when they submitted. But I think you represented
12 it was --

13 Q. July. In July -- is that correct?

14 A. I don't know. I don't remember.

15 MR. COUGHLIN: Your Honor, may I approach the
16 witness, please?

17 THE COURT: You may.

18 MR. COUGHLIN: For the record, I'm not going
19 introduce this into evidence, but this is Defendant's Exhibit
20 7.

21 BY MR. COUGHLIN:

22 Q. And Dr. Tillman [sic], I just want to -- if you can look
23 at the front of that and confirm that that is the application
24 or the cover letter to -- by which Pyxis submitted the
25 application on behalf of Greenfield for azoxystrobin technical?

1 A. No. This is actually the azoxystrobin 2.08 SC.

2 Q. What is the date of that?

3 A. August 13th, 2013.

4 Q. I'll take it back. We'll address that separately so I
5 don't take up your time. But for purposes of this question,
6 assume that at the end of July 2013 is when the application for
7 technical registration was submitted. All of these
8 conversations about Syngenta's process patent occurred before
9 that was submitted, correct?

10 A. Yes.

11 Q. And, so, and in that submission, it identifies Tai He as
12 performing the etherification and condensation reaction steps
13 in the process to make azoxystrobin, correct?

14 A. I think that was correct. I would want to refresh my
15 memory on that.

16 Q. Well, you testified on Friday that there was a -- that
17 Pyxis submitted an application to amend that registration to
18 change the identification of the entities that performed steps
19 in the manufacturing process, correct?

20 A. Yes.

21 Q. And Pyxis submitted that on behalf of the registrant, is
22 that right?

23 A. We did, yes.

24 Q. And Pyxis, it didn't do anything to confirm the accuracy
25 of that information, did it?

1 A. No. We take the information that's provided to us by the
2 sponsor, and in this case, we were given Mr. Wu's deposition
3 testimony. And SSJ did a site visit of where the different
4 steps were being conducted.

5 Q. But you didn't -- Pyxis didn't -- isn't vouching for
6 itself, didn't do anything to verify that information, correct?

7 A. That's correct, we did not verify.

8 Q. And I don't believe you testified when that application
9 was submitted. Isn't it true that that application to amend
10 the registration was filed in July of 2017, less than two
11 months ago?

12 A. I think that's correct, yes.

13 Q. And all of the azoxystrobin that Willowood has imported
14 into the United States has been under a registration that
15 identifies Tai He as conducting both the condensation and the
16 etherification steps, isn't that right?

17 A. I don't know what Willowood has imported or what they're
18 using. I'm not aware of that.

19 Q. Well, that's what the registration was based on, correct,
20 that Pyxis submitted?

21 A. The registration for Greenfield's for the technical
22 product identified Tai He as the manufacturer.

23 Q. And that's all I'm asking about is for the technical
24 product.

25 A. Yes. That's correct.

1 MR. COUGHLIN: No further questions, Your Honor.

2 THE COURT: Redirect?

3 MR. NEUMAN: No. Thank you.

4 THE COURT: No. All right. Thank you. You may step
5 down.

6 (Witness excused.)

7 THE COURT: Willowood can call its next witness.

8 MR. NEUMAN: Your Honor, Willowood, at this point,
9 would call Brad Reichman by deposition.

10 THE COURT: All right. Ladies and gentlemen, you'll
11 remember that Mr. Reichman testified by deposition earlier.
12 This is where I made my one mistake in the trial, you'll
13 remember, and I told you that this was all of Mr. Reichman's
14 testimony. Not so. The defendant has some of his testimony
15 that they want to put into evidence as well. You're going to
16 read it?

17 MR. TILLER: I am playing the part of Mr. Reichman.

18 THE COURT: All right. Go ahead.

19 MR. NEUMAN: And, Your Honor, this also includes some
20 counter-designations.

21 THE COURT: Some counter-designations from the
22 plaintiff for completeness.

23 MR. TILLER: I'm not used to being in this chair.

24 THE COURT: And just as with the other deposition,
25 ladies and gentlemen, you are to take this testimony as if the

1 witness was present in the courtroom to the extent that you
2 can. Go ahead.

3 MR. NEUMAN: May I approach the witness and give him
4 a binder?

5 THE COURT: You may.

6 MR. NEUMAN: Your Honor, we will move into evidence
7 Defendant's 120, 123, and 171, with the following caveat: As a
8 result of the discussion I've had with counsel, we will be
9 moving -- with respect to 123, we will be moving into evidence
10 only certain pages of Exhibit 123, and they would be what are
11 Bates stamped as REI with the last two digits being 47, 49, 51,
12 53, and 56 through 62.

13 THE COURT: Okay.

14 MR. COUGHLIN: I believe that some of these exhibits
15 are hearsay, Your Honor.

16 THE COURT: Are these all exhibits talked about by
17 Mr. Reichman?

18 MR. NEUMAN: Yes, they are. Yes.

19 THE COURT: Well, we'll just have to get to it,
20 because I don't remember without getting to it. So just object
21 whenever you get to it.

22 MR. COUGHLIN: Yes, Your Honor.

23 THE COURT: Go ahead.

24 (Deposition of Brad Reichman read into the record as
25 follows:)

1 BY MR. NEUMAN:

2 Q. Could you state your name, please.

3 THE COURT: Well, wait a second. I'm sorry. Can you
4 all approach just briefly.

5 (Bench conference as follows:)

6 THE COURT: So the objections that I ruled on as to
7 Mr. Reichman, whose objections were those, both?

8 MR. SANTHANAM: Both.

9 THE COURT: Okay. So --

10 MR. COUGHLIN: As I understand, there are invoices in
11 here from Cheminova.

12 MR. SANTHANAM: And e-mails from Cheminova employees
13 to Mr. Reichman. There's invoices from Cheminova employees
14 to --

15 THE COURT: Okay. That's overruled. He established
16 that.

17 (Bench conference concluded.)

18 THE COURT: All right. Ladies and gentlemen, I'm
19 sorry. I remembered something, and just wanted to get it
20 straight so that the testimony would go more smoothly.
21 Mr. Tiller?

22 MR. TILLER: I'm sorry, I was just he asked a
23 question I didn't have the answer to.

24 THE COURT: All right. So Defendant's 120, the pages
25 identified from 123 and 171, those three exhibits will be

1 admitted.

2 (Reading of deposition continued.)

3 BY MR. NEUMAN:

4 Q. Mr. Reichman, good morning.

5 A. Hello.

6 Q. You need to speak for the record so that your answers --

7 A. I said hello. Did you not hear me?

8 Q. I did not. Could you state your name, please.

9 A. Brad Reichman.

10 Q. And what's your occupation?

11 A. Chemical sales.

12 Q. By whom are you employed?

13 A. Today, Wilbur-Ellis owns Reichman Sales.

14 Q. What is Reichman Sales?

15 A. A chemical company. We sell chemicals.

16 Q. What's your position within Reichman Sales?

17 A. I'm the general manager now. I used to be president, but
18 now that Wilbur-Ellis owns us, I'm the general manager.

19 Q. Thanks. Just a couple of things I want to go over as a
20 preliminary matter with you, Mr. Reichman. This is a
21 deposition. You understand you're under oath?

22 A. Yes.

23 Q. Okay. So you will do your best to answer questions I ask
24 you truthfully and completely?

25 A. Yes.

1 Q. I can't hear you.

2 A. Yes.

3 Q. It might help if you put your cell phone down, actually,
4 and listen to the questions. I'm sorry. What was that?

5 A. I didn't say anything.

6 Q. Okay. Well, you made some gesture. I'm curious what that
7 is.

8 A. I'm not putting my cell phone down was the gesture.

9 Q. I want to ask you a couple of questions about Reichman
10 Sales & Service. What exactly is the business of Reichman
11 Sales & Service?

12 A. We are a -- we are a retailer distributor of ag chemicals
13 all over the country.

14 Q. Could you describe generally the type of customers you
15 sell to? Do you sell to retailers or growers or other
16 distributors?

17 A. We will sell to farmers, we sell to other dealers, so a
18 little bit of everything.

19 Q. Were you directly involved in purchasing and selling
20 agrichemical products?

21 A. Yes.

22 Q. And in that capacity, did you regularly interact with your
23 suppliers and your customers?

24 A. Yes.

25 Q. Okay. Did you regularly negotiate pricing with your

1 suppliers at which your suppliers would sell you agrichemical
2 products?

3 A. Yes.

4 Q. And did you regularly discuss and negotiate with your
5 customers the price at which you would sell agrichemical
6 products?

7 A. Yes.

8 Q. Did I understand you correctly to say that you bought
9 Syngenta's azoxystrobin products until generics came into the
10 market?

11 A. Yes.

12 Q. Who was the first generic from whom Reichman Sales &
13 Services purchased azoxystrobin products?

14 A. Willowood.

15 Q. Willowood? Are you sure about that?

16 A. No. Maybe Cheminova first and then Willowood. Yeah, I
17 think that was the order of things. Cheminova first and then
18 Willowood.

19 Q. Mr. Reichman, you've been handed by the court reporter
20 what's been marked as Exhibit 3, which consists of several
21 consecutive pages of documents you produced in response to the
22 subpoena, which we have designated at the bottom as REI pages 6
23 through 9. Do you have that in front of you?

24 A. Yes.

25 Q. Have you seen these e-mails before? Do they look

1 familiar?

2 A. Yes.

3 Q. Did you obtain these e-mails from Reichman Sales &
4 Service's e-mail file in response to the subpoena that we sent
5 you?

6 A. Yes.

7 Q. Do you see that on the very first page -- that on the
8 first -- very first page of the document from Mitch Clan to
9 Brad Reichman dated June 9, 2014?

10 A. Yup. Yes.

11 Q. Who is Mitch Clan?

12 A. He was the sales rep from Cheminova.

13 Q. And what is he sending you in the e-mail?

14 A. It just look likes an introduction to the azoxystrobin
15 product coming out as a generic.

16 Q. And this was dated June 9, 2014, he's sending you this
17 price sheet. Do you believe you would have had a conversation
18 of some sort or some sort of communications with Mr. Clan prior
19 to this date concerning azoxystrobin?

20 A. We talked on a weekly basis.

21 Q. Mr. Reichman, you've been handed by the court reporter
22 what's been marked for identification as Exhibit 4 in this
23 deposition, which consists of a series of pages that were
24 produced by Reichman Sales & Service in response to the
25 subpoena, and they're Bates stamped consecutively REI 63

1 through 80. Do you have that in front of you?

2 A. Yes.

3 Q. I'd like you to look, please, at the first page of the
4 document, which is Bates stamped REI 63. Do you recognize this
5 document?

6 A. Yes.

7 Q. What is it?

8 A. An invoice from Cheminova.

9 Q. For what?

10 A. Equation.

11 Q. And the date of the invoice is July 22nd, 2014 at the top
12 right?

13 A. That's correct, yes.

14 Q. And what's the total volume of quantity of product of
15 Equation that's invoiced on this document?

16 A. 540 gallons.

17 Q. And what is the net price that this document indicates
18 Reichman was to pay Cheminova for that quantity of Equation?

19 A. It's billed at 175 with a \$25 discount.

20 Q. Which would make it a net price of \$150?

21 A. 150, yes.

22 Q. And is \$150 the price that you negotiated with, that you
23 agreed upon with Cheminova?

24 A. Yes, it must have been at that time.

25 Q. Do you recall how much Equation Reichman Sales & Service

1 purchased from Cheminova in 2014?

2 A. I do not recall.

3 Q. Do you have an approximate estimate?

4 A. I do not, no.

5 Q. Looking at Exhibit 4, could you look through the invoices,
6 purchase orders and add them up and tell me what quantity you
7 come to?

8 A. Several thousand gallons it looks like.

9 Q. Could you add it up for me.

10 A. No. I'm not going add it up for you. You have the
11 documents.

12 Q. Actually, sir, I'm asking you to add it up, and it's your
13 obligation --

14 A. I'm not adding it up. I'm not adding it up.

15 Q. It's your obligation to do so, sir?

16 A. I'm not adding it up.

17 Q. Did Reichman pay \$150 per gallon for all the product it
18 purchased from Cheminova in 2014?

19 A. Is that what it says? Then what's what we paid.

20 Q. Sir, I'm asking you if that's what the documents reflect.

21 A. If that's what the documents say, then that's what we
22 paid.

23 Q. What happened in -- at some point in 2014, you stopped
24 purchasing azoxystrobin product from Cheminova, correct?

25 A. Because Willowood came in cheaper.

1 Q. At some point you stopped buying from Cheminova, correct?

2 A. Because Willowood came in cheaper.

3 Q. Okay. So this e-mail from you to Mr. King is dated
4 May 19th, 2015. Would it be accurate, then, to say that by
5 May 19th, 2015, you were having conversations with someone at
6 Cheminova about possibly supplying azoxystrobin product to
7 Reichman Sales & Services again?

8 A. Yeah, I would assume that. Yes.

9 Q. Now, is it accurate to say that at some point in 2015,
10 after these e-mail exchanges, that you switched from Willowood
11 to FMC for azoxystrobin products? Do you recall whether that
12 is the case?

13 A. I started buying from FMC.

14 Q. And do you recall when?

15 A. No.

16 Q. Are there documents that would refresh your recollection?

17 A. Yes, you have the documents.

18 Q. You've been handed by the court reporter what is marked
19 for identification as Exhibit 6 to your deposition, which is a
20 series of documents that Reichman Sales & Service produced in
21 response to the subpoena. And they are Bates REI 81 through
22 122. Do you have that in front of you?

23 A. Yes.

24 Q. Okay. I'd like you to take a look, please, at the first
25 page of this document, which is Bates stamped 81. Do you

1 recognize this document?

2 A. Yes.

3 Q. What is it?

4 A. Its an invoice from FMC.

5 Q. And it's dated June 12th, 2015 up in the right --

6 A. 6/12, yeah.

7 Q. How much Equation does it reflect that Reichman Sales &

8 Service was purchasing from FMC?

9 A. This one says 360 gallons.

10 Q. So what was the actual amount paid for this quantity of

11 material?

12 A. I would assume if you did the math it's probably \$100 then

13 per gallon.

14 Q. So is it fair to say that Reichman Sales & Service paid

15 \$100 a gallon for this product?

16 A. Yes.

17 Q. Okay. I'd like you to turn to the third page of the

18 document, which is REI 83. Do you have that in front of you?

19 A. Yes.

20 Q. And this is a different invoice number, correct?

21 A. Yes.

22 Q. And what's the amount of product of the Equation that

23 you're purchasing as reflected in this invoice?

24 A. 360 gallons.

25 Q. And what is the price that Reichman Sales & Service

1 actually paid for this product?

2 A. Well, the invoice shows 125, and the next page shows a
3 rebate, so it equates down to \$100 a gallon again.

4 Q. Let's look at the next page which is Bates 86 and this is
5 another invoice. How much Equation SC does this invoice
6 reflect Reichman Sales & Service purchasing from FMC?

7 A. 720 gallons.

8 Q. And what is the purchase price ultimately paid by Reichman
9 Sales & Service for this 720 gallons?

10 A. Well, the same scenario as the last; 125 on the list with
11 a credit brings it down to \$100 a gallon.

12 Q. I'd like you to turn to the next page, please. It's a
13 copy of FMC Invoice 90468552, it's REI 89. Do you have that in
14 front of you?

15 A. Yes.

16 Q. How much product does this reflect that Reichman Sales &
17 Service purchased?

18 A. 720 gallons.

19 Q. At \$100 a gallon?

20 A. The invoice shows 125 plus the credit on the next page.

21 Q. I'm going to ask you to take that calculator and look at
22 the document that's in front of you, and add up and tell me how
23 much --

24 A. I'm not going to do it.

25 Q. Let me finish the question, and then you can put on the

1 record that you refuse to do it as you turn your back on me.
2 I'm going to ask you how much Equation these documents reflect
3 Reichman Sales & Service purchased from FMC in 2015. Will you
4 do that, please?

5 A. No.

6 Q. Now these -- we've been discussing invoices here in
7 Exhibit 6, which reflect the purchase price from FMC of \$100 a
8 gallon. Do you recall whether, in fact, any of the product
9 sold to Reichman Sales & Service in 2015 by FMC was sold to
10 Reichman Sales & Service at lower than \$100 a gallon?

11 A. Yes.

12 Q. What do you recall?

13 A. I bought some for under \$100 a gallon.

14 Q. From FMC?

15 A. Yes.

16 Q. What price did you pay?

17 A. I believe 90.

18 Q. And how much product did you pay \$90 a gallon, do you
19 recall?

20 A. I think a load. I don't recall how many gallons total.

21 Q. Was it 20 pallets?

22 A. I do not remember.

23 Q. How much is in a pallet?

24 A. 180 gallons.

25 Q. Please take a look at Exhibit 7 for identification. Who

1 is Robert West?

2 A. He is an employee of FMC.

3 Q. And was he someone whom you discussed azoxystrobin product
4 pricing with on behalf of Reichman Sales & Service?

5 A. Yes.

6 Q. I'd like you to take a look at his e-mail dated July 15,
7 2015 at the top. It says, "I will agree to this one time
8 exception for a single order of 20 pallets of Equation
9 delivered to a single location for a net price of \$90." Do you
10 see that?

11 A. Yes.

12 Q. So does that refresh your memory as to how much you
13 purchased at a price of \$90?

14 A. Yes.

15 Q. And was it 20 pallets?

16 A. Yes.

17 Q. And how much product would 20 pallets be?

18 A. Twenty times 180.

19 Q. And by this time you had severed your relationship with
20 Willowood with respect to its azoxystrobin, is that correct?

21 A. I believe so.

22 Q. Does Willowood have a reputation in terms of the quality
23 of their products?

24 A. The quality is good. There's no problem with that.

25 Q. Okay. Have you ever heard of companies not wanting to

1 associate themselves with Willowood?

2 A. Oh, yeah. Most of the major distributors do not have
3 anything to do with Willowood.

4 Q. And can you name a couple of the distributors?

5 A. No. I don't know which ones, but most of them do not have
6 an association with them.

7 Q. Is that based on your experience in the industry selling
8 crop products?

9 A. Yes.

10 Q. Now, if you could turn -- if you could, turn to REI 76.
11 This was a document that's contained in Exhibit 4 that
12 Mr. Neuman gave you, but I wanted to point you to this
13 document. This is an invoice from Cheminova. It's dated with
14 a reference date of July 2nd, 2014, is that right?

15 A. Yes.

16 Q. Now, Mr. Neuman suggested that all of the invoices from
17 Cheminova were at a net price of \$150. I'd like you to take a
18 look at the unit price here. That's \$175, is that right?

19 A. That's correct.

20 Q. The discount that was being offered, was \$20 per gallon,
21 is that correct?

22 A. That is correct.

23 Q. So the net price Cheminova was providing was actually
24 \$155, is that right?

25 A. At that time, you are correct.

1 Q. Okay. That same net price is also on REI 78, is that
2 right, if you can go there and confirm for me?

3 A. That is correct.

4 Q. Okay. If you could -- so as of early July 2014, through
5 at least July 7th, 2014, Cheminova was offering a net price of
6 \$155 per gallon for Equation, is that right?

7 A. Yes.

8 Q. If you go to REI 63 a little bit earlier, as Mr. Neuman
9 had indicated, there's a unit price here of \$175 and a discount
10 price of \$25, resulting in a net price of \$150. Is that right?

11 A. Yup, that is correct.

12 Q. So in the year of 2014, the lowest net price that
13 Cheminova offered for Equation was \$150 net price, is that
14 right?

15 A. That's what it looks like, right.

16 Q. I'm going to hand you Exhibit 8, and I'd like you to turn
17 to page 10 of the exhibit, which counsel discussed with you.
18 Now, counsel assumed in his question to you that REI 10, this
19 competitive response agreement, was the attachment to
20 Mr. King's e-mail dated June 1, 2015, which is the next page,
21 REI 11. Do you think that's right, that the competitive
22 response agreement that is reflected on page 10 was sent to you
23 by Mr. King on or about June 1, 2015?

24 A. I believe it has to be in that time frame, yeah.

25 Q. Now he calls this document a competitive response

1 agreement, right?

2 A. That's what he says here, yes.

3 Q. And the e-mail chain of REI 11 going back reflects some of
4 those communications that you and I went over this morning
5 between you and Mr. King, right?

6 A. Okay.

7 Q. Is that correct?

8 Nodding head up and down.

9 And in those emails, we discussed earlier this
10 morning, you were telling Mr. King that Cheminova FMC, and it
11 says you were telling Mr. King about Cheminova FMC and its
12 azoxystrobin, right?

13 A. Yes.

14 Q. And in the e-mails we discussed earlier this morning,
15 Mr. King was trying to convince you that Cheminova didn't have
16 enough product to sell you, and you were telling Mr. King how
17 much FMC had told you they thought they had, right?

18 A. That's what this e-mail says, yes.

19 Q. So during this period, you were negotiating with Willowood
20 for possible reduction in price or terms concerning future
21 purchase of azoxystrobin, right?

22 A. It looks like I was negotiating pricing, yes.

23 Q. So on REI 10, where it says competitive response
24 agreement, what do you take competitive response to mean?

25 A. He was lowering his price to compete with somebody.

1 Q. Compete with FMC, right?

2 A. It doesn't say that on here.

3 Q. Well, you testified earlier that this sheet was attached
4 to Mr. King's June 1, 2015 e-mail, right?

5 A. I didn't. I don't know what this was attached to, to be
6 honest with you. I don't know. It was obviously an e-mail
7 from Andy King, but I don't know where it was, which one it
8 came from. I really don't know.

9 Q. Leading up to June 1, 2015, you were reporting to Mr. King
10 that you could get azoxystrobin from Cheminova at a certain
11 price, correct, and under certain terms, right?

12 A. I'm not sure pricing here, but I don't see a price in
13 here.

14 Q. But shortly after these e-mails, Reichman began to
15 purchase azoxystrobin product from FMC for \$100 net per gallon,
16 isn't that right?

17 A. That's correct.

18 Q. Wouldn't it be fair to say that by June 1, 2015 you were
19 in that ballpark in discussions for price in your discussions
20 with Cheminova?

21 A. I must have been talking to FMC already, yes.

22 Q. And is that the price that you were telling Willowood you
23 could purchase azoxystrobin for from Cheminova in 2015?

24 A. I do not remember.

25 Q. Okay. Now, in the competitive response sheet that's

1 reflected in REI 10, he's offering you a price for a specified
2 number of gallons at \$125 per gallon, correct?

3 A. Yes.

4 Q. And you ultimately did not enter into an agreement in 2015
5 to purchase azoxystrobin products from Willowood, correct?

6 A. I had already bought product from Willowood in 2015.

7 Q. No. You bought in 2014, correct?

8 A. I think, yes. I think it was bought in December of 2014
9 for the 2014 season, so I guess technically when I'm talking
10 about it, it was for the 2015 season.

11 Q. I think there was a misreading there.

12 THE COURT: If you could repeat that answer.

13 THE WITNESS: I'm sorry.

14 (Reading of depo continued.)

15 THE WITNESS: I think, yes, I think it was bought in
16 December of 2014 for the 2015 season. So I guess technically,
17 when I'm talking about it, it was for the 2015 season.

18 BY MR. NEUMAN:

19 Q. But in calendar year 2015, you did not enter into any
20 agreement to purchase azoxystrobin from Willowood, is that
21 correct?

22 A. I believe I did buy some in -- I had to buy some in 2015,
23 AzoxyProp or azoxy. If it all came in before the year-end it
24 might have. I don't -- our sales were in 2015 calendar year.

25 Q. And in 2015, you were negotiating with Willowood as you

1 were disengaging from them, correct?

2 A. That's correct.

3 Q. And that's when you were telling Willowood that you could
4 get \$100 a gallon from FMC on better terms, correct?

5 A. That was later in 2015 in the summer, correct."

6 MR. NEUMAN: That completes the examination.

7 THE COURT: All right. You may step down.

8 You can call your next witness.

9 MR. NEUMAN: Yes. The defendants call Andy King.

10 THE COURT: He's outside the courtroom? All right.

11 Anybody need to stand up while they're getting the witness?

12 Everybody's good?

13 (ANDY KING, DEFENDANT'S WITNESS, WAS SWORN.)

14 MR. NEUMAN: Your Honor, may I approach the witness?

15 THE COURT: You may.

16 MR. NEUMAN: And binder includes Defendant's 120 and
17 123, and I'll be examining Mr. King on the same pages from
18 Exhibit Defendant's 123 that we discussed previously --

19 THE COURT: All right. Go ahead.

20 MR. NEUMAN: -- and move those into evidence.

21 THE COURT: Didn't I already admit them; 120 and 123?

22 Yes, I did. Go ahead.

23 ANDY KING,

24 DEFENDANT'S WITNESS, SWORN AT 9:54 A.M.

25 DIRECT EXAMINATION

1 BY MR. NEUMAN:

2 Q. Mr. King, good morning.

3 A. Good morning.

4 Q. How are you employed?

5 A. At Willowood USA.

6 Q. And what's your position there?

7 A. Business development manager.

8 Q. And can you tell the jury, do you have any post-high
9 school education?

10 A. Yes, sir. I graduated from Southeast Missouri State
11 University in Cape Girardeau, Missouri, with degrees in
12 agriculture and marketing in 1992.

13 Q. And why did you become interested in that particular field
14 of agriculture?

15 A. I was raised on a family farm in Southeast Missouri, so
16 I -- I've loved farming since the day that I was old enough to
17 ride with my father on a combine or a tractor.

18 Q. And was that a commercial farm?

19 A. Yes, sir, it was.

20 Q. What kind of crops did you grow in that farm?

21 A. It was all row crops; corn, soybeans, some rice and
22 cotton, as well.

23 Q. Did the farm use pesticides?

24 A. Yes, sir, we did. We used fungicides, insecticides and
25 herbicides on those crops.

1 Q. And did you become familiar with pesticides and fungicides
2 working on that farm?

3 A. Yes, sir, I did.

4 Q. Now, could you summarize, please, after you graduated
5 college -- that was in 1992, did you say?

6 A. That's correct.

7 Q. So where did you work first and what did you do?

8 A. I began an internship with a large agricultural chemical
9 company named Rhone-Poulenc. That internship began in the
10 state of Louisiana. There I worked with large rice growers
11 with fungicide recommendations.

12 From there the internship continued into the State of
13 Florida where I worked with large citrus growers and
14 insecticide recommendations.

15 Q. And did you have other positions with Rhone-Poulenc?

16 A. I was then offered a sales territory, manager position
17 with the company full time back in Southern Missouri.

18 Q. And what did you sell?

19 A. The full portfolio of Rhone-Poulenc, which was, again,
20 herbicides, insecticides and fungicides.

21 Q. And how long did you stay with Rhone-Poulenc?

22 A. Through different mergers and acquisitions, Rhone-Poulenc
23 became eventually Bayer Crop Science, so I stayed there as
24 territory sales manager through 2008, and then my last eight
25 months or so at Bayer Crop Science I served as business --

1 southern region business director out of our regional office in
2 Memphis, Tennessee.

3 Q. And what kinds of things did you do as regional business
4 director?

5 A. I reported directly to the southern regional manager, and
6 I was heavily involved in customer program fulfillment, rebate
7 fulfillment.

8 Q. I'm sorry, what?

9 A. Customer rebate and program fulfillment.

10 Q. This was for Bayer?

11 A. Yes, sir.

12 Q. And then after you -- you said 2008 you left
13 Rhone-Poulenc?

14 A. 2009 I would have left Bayer Crop Science.

15 Q. And where did you go next?

16 A. I then went to a large international generic company named
17 Cheminova, and I worked there as a territory sales manager for
18 the states of Arkansas and Missouri.

19 Q. What did you sell?

20 A. Again, insecticide, fungicides, herbicides.

21 Q. For what types of crops?

22 A. Mostly row crops in that geography. Pretty heavy in rice
23 and cotton and certainly soybeans and corn.

24 Q. And how long did you stay at Cheminova?

25 A. A little over a year.

1 Q. What did you do then?

2 A. I went to work for Willowood USA.

3 Q. And how did you -- what prompted you to go work for
4 Willowood?

5 A. I became familiar or met Brian Heinze in our early years
6 at Rhone-Poulenc, and we became acquainted, and we kept up with
7 each other's accomplishments over the years. And in fall of
8 2009 when he was starting Willowood, he contacted me and
9 recruited me over the next few months to come to work at
10 Willowood.

11 Q. And you said you were national sales manager when you came
12 on board. What do you do as national sales manager at
13 Willowood?

14 A. I was responsible for all of the sales east of the Rocky
15 Mountains as well as management of our national sales team.

16 Q. And did you take a different position at some point at
17 Willowood?

18 A. Just over a year ago, I became business development
19 manager.

20 Q. Now, are you familiar with Brad Reichman and Reichman
21 Sales & Service?

22 A. Yes, sir, I am.

23 Q. How so?

24 A. Mr. Reichman had been a customer of Willowood USA.

25 Q. Was Reichman your account at Willowood?

1 A. Yes, sir, he was.

2 Q. At some point did you approach Mr. Reichman about the
3 possibility of selling him Willowood's generic azoxystrobin
4 products?

5 A. Yes, sir. That would have been after we received our
6 registrations in the fall of 2014.

7 Q. And did Willowood ultimately reach an agreement to sell
8 Reichman Sales & Services' azoxystrobin products?

9 A. Yes, sir, we did in October of 2014.

10 Q. And were the terms of that agreement memorialized in
11 writing?

12 A. Yes, sir. They would have been memorialized in an initial
13 sales order and followed up by shipping or purchase orders from
14 Reichman Sales & Service to Willowood USA.

15 Q. Mr. King, if you could take the binder that's been handed
16 you, and there's a tab there that says D-123. And, Bonnie, if
17 you could pull up REI 61. It will be the next to the last page
18 in this exhibit binder. Do you have that in front of you?

19 A. Yes, sir, I do.

20 Q. Do you recognize this documents?

21 A. Yes, sir. This is the initial sales order to Reichman
22 Sales & Service.

23 Q. And when was that negotiated? What's the date?

24 A. October 17 of 2014.

25 Q. Who prepared this document?

1 A. I did.

2 Q. And Mr. Reichman approved the terms?

3 A. Yes, sir, he did.

4 Q. Now, this sales order identifies a number of products.

5 Could you just point the panel to the azoxystrobin products
6 that Willowood agreed to sell Mr. Reichman in the fall of 2014
7 under this sales order?

8 A. Yes, sir. It's Willowood Azoxy 2SC and Willowood
9 AzoxyProp Xtra, or EW.

10 Q. What is reference to AzoxyProp EW? What is that?

11 A. That was the initial name of the product based upon the
12 formulation that it was an emulsion in water formulation. We
13 changed that shortly after for marketing reasons to AzoxyProp
14 Xtra.

15 Q. And does this exhibit accurately reflect the price --
16 prices at which Willowood and Reichman agreed would apply in
17 October 2014 to Azoxy 2SC and AzoxyProp Xtra?

18 A. Yes, sir, it does. It's \$125 per gallon on the Willowood
19 Azoxy 2SC.

20 Q. And what about on the AzoxyProp?

21 A. \$90 per gallon on the AzoxyProp Xtra.

22 Q. Now at this time, were there any side deals with
23 Mr. Reichman to sell these products at some price cheaper than
24 what's -- or less expensive than what's shown on the sales
25 order, like rebates or discounts?

1 A. No, sir, there weren't.

2 Q. How did you arrive at the prices for these azoxy products
3 with Mr. Reichman?

4 A. Well, we certainly didn't want to start this low. Our
5 initial discussions began in the \$150 range on the azoxy
6 product; but at that time, the negotiation -- Mr. Reichman said
7 that he was being offered Cheminova Equation, which is their
8 Azoxy 2SC product at \$130 per gallon.

9 Q. And was that consistent with other information you had?

10 A. It was. We were getting other information from other
11 retailers in the midwest that were claiming the same offers.

12 Q. Were there any other sources that you were hearing prices
13 being offered by Cheminova around that price?

14 A. Any other sources?

15 Q. Yes. Any other -- besides distributors in the midwest,
16 were you hearing prices around \$130 being offered by Cheminova
17 by anyone else?

18 A. No, sir.

19 Q. Do you know Mitch Clan?

20 A. Yes, I do.

21 THE COURT: Say again.

22 Q. Do you know Mitch Clan?

23 A. Yes, I do.

24 Q. And who is Mitch Clan?

25 A. Mitch Clan is the gentleman that hired me at Cheminova?

1 He's their national sales manager.

2 Q. And were you talking to him around this time about
3 Cheminova's pricing?

4 A. Yes, sir. We did stay in contact after I left Cheminova,
5 and he -- we talked on an every-other-week basis, but he kept
6 me updated on what they were seeing throughout 2014 when they
7 entered the market and then late 2015 or early 2015. So he was
8 also telling me what they were seeing in the field on pricing.

9 Q. And what was he saying? What was he telling you?

10 A. He was telling us 125 in the southeast and the 130 range
11 in the midwest.

12 Q. 125 and 130 for what product sold by whom?

13 A. So it would have been the Cheminova products. So the 125
14 would have been their Azaka product, and 130 would've been the
15 Equation.

16 Q. That's what he was telling you Cheminova was selling those
17 products for in the summer of 2014?

18 A. That's what he says saying on the Azaka product. I'm not
19 sure on the Equation.

20 Q. Now, why didn't you -- if Mr. Reichman was telling you he
21 could buy azoxystrobin products from Cheminova at \$130 a
22 gallon, why do you agree to sell him at \$125 a gallon as
23 reflected on the sales order we looked at?

24 A. We had to be at a slight discount to get him to switch
25 brands.

1 Q. And how did you come to arrive at \$90 a gallon as the
2 price to sell AzoxyProp Xtra to Mr. Reichman in the fall of
3 2014?

4 A. He claimed at that time that his price on Quilt Xcel,
5 which was Syngenta's product, was at \$90 per gallon -- I'm
6 sorry -- \$110 per gallon.

7 Q. He was telling you that he could buy Syngenta's Quilt Xcel
8 at that time for \$110 per gallon?

9 A. That is correct.

10 Q. And before this time in October 2014 when you were talking
11 to Mr. Reichman about the possibility of selling your
12 equivalent of Quilt Xcel, that is, AzoxyProp Xtra, up to this
13 time had Willowood sold any AzoxyProp Xtra in 2014?

14 A. No, sir, we had not.

15 Q. Your sales to Mr. Reichman in the fall were the first
16 sales of AzoxyProp Xtra by Willowood?

17 A. That is correct.

18 Q. Now, this agreement that we looked at, the sales order of
19 October 2014, was made in October 2014, for what growing season
20 would Mr. Reichman have sold the azoxystrobin product that he
21 was agreeing to buy from you?

22 A. This would have been for the 2015 season.

23 Q. And when was product first shipped to Mr. Reichman under
24 the sales order?

25 A. The first shipment would've been in December of 2014.

1 Q. Now, when Mr. Reichman wanted to ship specific amounts of
2 product -- wanted Willowood to ship specific amounts of product
3 against that October 2014 sales order, were those requests
4 reflected in any documents?

5 A. Yes, sir. He would submit purchase orders to our office
6 that we would ship against.

7 Q. All right. I'd like you to look again at Defendant's 123
8 in your binder. And, Bonnie, if you could pull up what's Bates
9 stamped REI 47. Do you have that in front of you?

10 A. Yes, sir, I do.

11 Q. Do you recognize the document?

12 A. Yes, sir. This is -- this would be a purchase order for
13 Willowood 2SC at a price of \$125 per gallon, which was the
14 original contract price.

15 Q. This is from a purchase order issued by -- sent to you by
16 whom?

17 A. Mr. Reichman.

18 Q. And this was against the original October 2014 sales
19 order?

20 A. Yes, sir, it is.

21 Q. And, again, the price reflected here for Azoxy 2SC is
22 under rate?

23 A. That's correct.

24 THE COURT: Under what?

25 BY MR. NEUMAN:

1 Q. Under the column marked "rate," what is the price?

2 A. \$125 per gallon.

3 Q. Now -- and is this typical of the standard purchase order
4 that Mr. Reichman sent to you when he wanted an order -- to
5 place an order of Azoxy 2SC against the October 2014 sales
6 agreement that we looked at?

7 A. Yes, sir, it is.

8 Q. Okay. Thank you, Bonnie. Mr. king, I'd like you to look
9 a few pages further back in this exhibit at what's Bates
10 stamped REI, the last two digits, 51, at the bottom. Could you
11 bring that up, Bonnie?

12 A. Yes, sir.

13 Q. Do you recognize this?

14 A. Yes. This is a purchase order from Reichman Sales &
15 Service to Willowood USA for AzoxyProp Xtra at a price of \$90
16 per gallon.

17 Q. And that's the price consistent with the price that was
18 agreed to back in October?

19 A. Yes, sir, that's correct.

20 Q. And is this standard form purchase order that Mr. Reichman
21 would issue to Willowood when he wanted Willowood to fill some
22 specific quantity against that 2014 sales agreement?

23 A. Yes, it is.

24 Q. Now, I'd like you to look, please -- and, Bonnie, you
25 don't have to put it up on the screen -- but I'd like you

1 quickly to look at what you've got in the binder as REI 49, 53,
2 56, 57, 59, and 60.

3 A. Yes, sir.

4 Q. Are these all additional purchase orders that Mr. Reichman
5 placed for specific quantities of AzoxyProp Xtra or Azoxy 2SC
6 against the 2014 sales order?

7 A. Yes, sir. These are continuing purchase orders towards
8 the initial sales order.

9 Q. And are all of the prices what we've already seen, \$90 for
10 AzoxyProp Xtra and \$125 for Azoxy 2SC?

11 A. That's correct.

12 Q. Now, did -- I gather that at some point Willowood did
13 begin making azoxy product for Reichman pursuant to these sales
14 orders and purchase orders, correct?

15 A. Yes, sir.

16 Q. Did Reichman make any payments to Willowood?

17 A. He did. The terms of this agreement were a third due
18 December 1st, 2014; a third due March 1st of 2015; and a third
19 due June 1st of 2015. He made --

20 Q. And what payments did he make?

21 A. He made the first two payments.

22 Q. Meaning the December 2014 payment and the March 2015
23 payment?

24 A. Yes, sir.

25 Q. Now, at some point after you started filling orders for

1 Mr. Reichman, did he come to you with any complaints?

2 A. He did. In February of 2015, he came to us -- or
3 contacted us and said that he was able to purchase Syngenta's
4 Quilt Xcel product on the open market at \$87 per gallon.

5 Q. From whom did he say he could buy Syngenta's Quilt Xcel on
6 the open market for \$87 a gallon?

7 A. He stated CPS, which is Crop Production Services.

8 Q. And that's one of Syngenta's major distributors, is that
9 right?

10 A. Yes, sir. It's one of the largest distributors in the
11 nation.

12 Q. So what did he say to you about that?

13 A. He asked us to lower the price of our product.

14 Q. Which product?

15 A. AzoxyProp Xtra.

16 Q. And what did Willowood do in response?

17 A. We agreed to lower his prior to \$80 per gallon, but we did
18 it not with a price adjustment, we did it by using free
19 product. So we sent him 1,080 gallons of Azoxy 2SC, which
20 essentially would lower his price on all the AzoxyProp Xtra
21 that he purchased to \$80 per gallon.

22 Q. And when was this?

23 A. This would've been March of 2015.

24 Q. Now, if Mr. Reichman was telling you he had to pay \$87 a
25 gallon for the branded product Quilt Xcel, why did you go to

1 \$80 on your -- an effective price of AzoxyProp Xtra?

2 A. Yes, well, Quilt Xcel is the brand, and we are a generic,
3 so there needs to be a spread there.

4 Q. And this all occurred in the first quarter of 2015?

5 A. Yes, sir, it did.

6 Q. After that incident, at some point during 2015 did you
7 hear again from Mr. Reichman concerning Willowood's pricing?

8 A. We did. In May of 2015, he contacted us again to say that
9 he was being offered Cheminova's Equation product at \$100 per
10 gallon.

11 Q. And what did he want you do about that?

12 A. He wanted us to meet that price with our product.

13 Q. And remind the jury, at that point your contract with
14 Mr. Reichman -- under that contract, you were selling Azoxy 2SC
15 at what price?

16 A. \$125 per gallon.

17 Q. Which was \$25 more than he was saying he could get it from
18 FMC?

19 A. That's correct.

20 Q. And remind the jury now who is FMC in relation to
21 Cheminova?

22 A. FMC purchased Cheminova in April of 2015. And one thing I
23 left out, I'm sorry, is that he also was offered 90-day terms
24 with that price of \$100 per gallon.

25 Q. What does 90-day terms mean?

1 A. It means he could take their product and sell it and not
2 have to pay for it for 90 days.

3 Q. And did Willowood -- what did Willowood do in response to
4 his request that you drop your price for product down to \$100?

5 A. We met his demand and dropped -- we didn't drop the price.
6 We offered him a rebate of \$25 a gallon that would be paid in
7 December of 2015 at the end of season.

8 Q. Now, during this period, did Mr. Reichman also complain
9 about any other pricing of Willowood's for azoxy products?

10 A. Yes, sir. Shortly thereafter, he claimed that he was able
11 to purchase our Willowood AzoxyProp Xtra from a local retailer
12 or competitor down the road named Ottawa Plant Food at \$80 per
13 gallon.

14 Q. Now, remind the jury what was your sales price to
15 Mr. Reichman for that product under the contract?

16 A. He was then at \$80 per gallon.

17 Q. As a result of the free goods that -- is that right?

18 A. Yes, sir, that's correct.

19 Q. So what did Mr. Reichman complain about?

20 A. Well, his conclusion was that if he could buy our product
21 from Ottawa Plant Food at \$80 a gallon, we were selling them at
22 a cheaper price than we were selling to him?

23 Q. Was that the case?

24 A. No, sir, it's not. Were.

25 Q. You selling to Ottawa Plant Foods in 2015?

1 A. We were.

2 Q. At what price were you selling AzoxyProp Xtra to Ottawa
3 Plant Foods?

4 A. Every sales orders was at \$100 per gallon.

5 Q. That was more than you were selling the price to
6 Mr. Reichman at that time, is that correct?

7 A. Yes, sir, that's correct.

8 Q. Did Mr. Reichman ask for any specific price adjustment for
9 the AzoxyProp Xtra that he had previously agreed to buy from
10 you at \$90 a gallon and then after the free goods \$80 a gallon?

11 A. Yes, sir. At that point he demanded that we go to \$65 per
12 gallon on our AzoxyProp Xtra.

13 Q. And when did those conversations take place? Remind the
14 jury, please.

15 A. It was the first week in June of 2015.

16 Q. And what did Willowood say in response to that demand?

17 A. We declined that offer.

18 Q. Let's be clear. What did you decline to do?

19 A. We were not going to lower the price any further than what
20 we already had with him.

21 Q. Price on which?

22 A. On AzoxyProp Xtra.

23 Q. So you would not agree to go down to \$65?

24 A. No, sir.

25 Q. Why not?

1 A. Because we could take the product back from him and sell
2 it at that price or higher prices to other customers.

3 Q. Now, during this period in May/June 2015, did you
4 ultimately reach an agreement with Mr. Reichman to resolve
5 these disputes and concerns he had over Willowood's pricing?

6 A. Yes, sir. Essentially, negotiations fell apart, and the
7 deal fell apart, and we agreed to go in and pick up our
8 remaining product and cancel his remaining orders that he had.

9 Q. If you could look again, please, was that agreement
10 memorialized in writing?

11 A. Yes, sir.

12 Q. And if you could look again, please, at Defendant's 123.
13 And, Bonnie, if you could pull up the last page of that
14 exhibit, which is Bates stamped the last two digits 62. Do you
15 recognize this document?

16 A. Yes, sir. This is the product return detail that I
17 prepared, a spreadsheet that I prepared for Mr. Reichman and
18 that he agreed to.

19 Q. And a spreadsheet for what? What does it show? What are
20 these terms?

21 A. It shows the product that he was returning as well as the
22 product orders that we were canceling. It backed out his
23 rebates, and then at the bottom was a total number that we
24 actually owed him since he had already made his first two
25 payments.

1 Q. So at a high level, could you just explain what the
2 agreement was with Mr. Reichman to resolve all these disputes?

3 A. Yes, sir. Well, the first section is the product, again,
4 that we -- he was returning or either canceling that he had on
5 order or he had in stock, and then we -- below that, we
6 subtracted his rebate, the 25-dollar-per-gallon rebate that we
7 offered him on the azoxy. Again, we subtracted out the free
8 goods that we had already given him to do that, and then what's
9 left -- against his account balance and then at the end of
10 the -- or the bottom is the total owed to Mr. Reichman.

11 Q. Why did you owe money back to Mr. Reichman?

12 A. Because he had already made his first two payments, and
13 they were greater than what the account balance was.

14 Q. And was this agreement ultimately implemented with
15 Mr. Reichman?

16 A. Yes, sir, it was.

17 Q. He agreed to these terms?

18 A. Yes, sir, he did.

19 Q. And at that point, after this agreement was reached and
20 implemented, did Willowood sell any additional azoxystrobin
21 products to Reichman Sales & Service in 2015 or 2016?

22 A. No, sir, we did not.

23 MR. NEUMAN: Thank you, Mr. King. I have no further
24 questions.

25 THE COURT: Questions for Syngenta?

1 MR. LEVINE: Yes, Your Honor. May I approach?

2 THE COURT: You may.

3 CROSS-EXAMINATION

4 BY MR. LEVINE:

5 Q. Good morning, Mr. King.

6 A. Good morning.

7 Q. Let's talk about what was happening in 2015 with respect
8 to pricing of Willowood's AzoxyProp Xtra product. If you'll
9 please turn in the notebook I just gave you to Plaintiff's
10 Exhibit 181. This is an e-mail chain, is it not, between you
11 and Mr. Heinze, among others, in July 2015, is that correct?

12 A. That's correct.

13 Q. And that's about a year after Willowood first started
14 selling its azoxy end-use products, correct?

15 A. That is correct. Well, about nine months, yes, sir.

16 Q. Nine months after AzoxyProp Xtra was sold but about a year
17 after Azoxy 2SC was sold, correct?

18 A. I'm not certain when the first Azoxy 2SC was sold.

19 Q. If you'll look at the second page of Plaintiff's Exhibit
20 181. And, David, if you could please pull that up on the
21 screen. At the bottom of the second page, there is an e-mail
22 from you dated July 6, 2015, to Mr. Heinze, and underneath
23 that, we see the question that Mr. Heinze's asked. So let's
24 look at the question first and then the answer.

25 The question was: "Andy," you were able -- "were you

1 able to do any additional due diligence on the azoxy pricing?"

2 That's the question you were asked by Mr. Heinze, correct?

3 A. Correct.

4 Q. And then looking above, the answer, you stated: "I'm
5 working on orders with Titan Pro and Harbrand," correct?

6 A. Correct.

7 Q. And you then said, "Prices are going down daily." That's
8 what you told Mr. Heinze, correct?

9 A. Correct.

10 MR. LEVINE: No further questions, Your Honor.

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION

13 BY MR. NEUMAN:

14 Q. Mr. King, do you know why prices were going down?

15 A. It was due to competition.

16 MR. NEUMAN: No further questions.

17 THE COURT: All right. Thank you. You can step
18 down.

19 You can call your next witness.

20 MR. TILLER: Your Honor, we're going to be offering
21 deposition testimony from Mr. Wu.

22 THE COURT: All right. Ladies and gentlemen, here is
23 another witness testifying by deposition. I think you all are
24 going to read it, correct?

25 MR. TILLER: We are.

1 THE COURT: Go ahead.

2 MR. TILLER: Thank you.

3 (Deposition of Wu was read into record as follows:)

4 Q. "Mr. Wu, good morning.

5 Could you please state your full name for the record.

6 A. My name is Wu Xiaolong, W-U for my surname,

7 X-I-A-O-L-O-N-G for my given name.

8 Q. And what is your current business address?

9 A. It is in Yancheng City, Jiangsu Province.

10 Q. By whom are you employed?

11 A. I'm not employed by anybody. I invested and created my
12 own company.

13 Q. What is the name of that company?

14 A. Yangcheng Tai He Chemicals.

15 Q. If I refer during the course of this deposition to that
16 company as "Tai He," will you understand that to be the company
17 which you formed?

18 A. Yes."

19 THE COURT: We need the mic for you, especially when
20 you're looking down.

21 MR. TILLER: I'm sorry.

22 (Reading of deposition of Mr. Wu continued as
23 follows:)

24 Q. "And who owns Tai He?

25 A. I own the company Tai He.

1 Q. Entirely?

2 A. Yes.

3 Q. And what is your title, if any, at Tai He?

4 A. Chairman of the board.

5 Q. What is the business of Tai He?

6 A. Chemicals and pesticides.

7 Q. Can you tell me, please, what products does Tai He sell?

8 A. Mainly pesticides.

9 Q. And can you identify the pesticides, please?

10 A. Azoxystrobin, isoxaflutole, as well as fludioxonil.

11 Q. Azoxystrobin, fludioxonil, and what was the third?

12 A. Isoxaflutole.

13 Q. Does Tai He manufacture any of those products?

14 A. Yes, we do.

15 Q. Where does Tai He manufacture azoxystrobin?

16 A. It is in Guangda.

17 Q. And what is Guangda?

18 A. It is called Guangda Chemicals, Lianyungang Guangda Chemicals.

19

20 Q. If I refer to that company as 'Guangda,' will you understand me to be referring to the place where products are manufactured for Tai He?

21

22

23 A. Yes, I understand.

24 Q. Where is Guangda located?

25 A. It is located in Guannan Chemical Industrial Park of

1 Lianyungang City.

2 Q. Is that near Tai He's location?

3 A. Yes.

4 Q. How close?

5 A. 10 kilometers.

6 Q. Do you have any ownership in Guangda?

7 A. No.

8 Q. Does anyone at Guangda have any ownership interest in Tai
9 He?

10 A. No.

11 Q. What is the business arrangement -- withdrawn.

12 What products did Guangda make that Tai He sells?

13 A. It is azoxystrobin as well as isoxaflutole and some
14 fludioxonil.

15 Q. And how would you characterize the business arrangement
16 between Tai He and Guangda concerning Guangda's manufacture of
17 product for Tai He? What is the nature of the business
18 relationship?

19 A. We cooperate with each other in production.

20 Q. What are your responsibilities as chairman of Tai He?

21 A. I am responsible for the operations and the production of
22 the entire company.

23 Q. How many professional employees does Tai He have,
24 approximately?

25 A. Over 20.

1 Q. Are any of those employees trained in the field of
2 chemistry?

3 A. Yes.

4 Q. How many?

5 A. Over 10.

6 Q. And what do they do; what are their job responsibilities?

7 A. There are two parts. One part is for the preparation of
8 the Tai He company. The other part is for the production of
9 our products.

10 Q. In the course of your job, do you customarily talk with
11 those chemists about the production of product for Tai He?

12 A. Yes.

13 Q. When was Tai He formed?

14 A. 2010.

15 Q. When did Tai He first start to sell azoxystrobin to any
16 customers?

17 A. It was in the season of 2011 to 2012. As for which month,
18 I can't remember.

19 Q. Can you name some of the customers whom were you
20 selling -- whom Tai He was selling azoxystrobin to at the
21 beginning in 2011?

22 A. They were Yi Tong from Shanghai, Sino Agri from Beijing,
23 as well as Yi Pu Le from Shenzhen.

24 Q. To approximately how many customers has Tai He sold
25 azoxystrobin since 2011?

1 A. Accumulatively, about 30 of them.

2 Q. At some point, did -- are you familiar with a company
3 called Willowood Limited?

4 A. Yes, I know.

5 Q. At some point, did Tai He have discussions with Willowood
6 Limited about azoxystrobin?

7 A. Yes.

8 Q. Do you recall when those discussions first began?

9 A. At the beginning of 2013.

10 Q. And did you participate in those discussions on behalf of
11 Tai He?

12 A. Yes.

13 Q. And who at Willowood Limited did you have those
14 discussions with?

15 A. It was Mr. Shen, Shen Shaojun.

16 Q. And can you tell me, please, what those -- can you
17 describe those discussions; what did Mr. Shen say to you?

18 A. It was at a trade show for pesticides. I met Mr. Shen and
19 he knew that we were producing azoxystrobin, and he suggested
20 that he was planning to register in a foreign country about
21 azoxystrobin, and he asked me to provide some material for the
22 registration so that in the future we could cooperate with each
23 other.

24 Q. And in response to Mr. Shen's request, did Tai He provide
25 Mr. Shen with any information?

1 A. Yes.

2 Q. What did Tai He provide Mr. Shen at that time in response
3 to his request?

4 A. We provided two documents: One, the JLP report; two, the
5 processing description.

6 Q. The process description for what?

7 A. Ti was for azoxystrobin.

8 Q. Who prepared that process description?

9 A. Specifically, I arranged Mr. Chiu Zhenghong to do it.

10 Q. And who is he?

11 A. He was an employee in my company.

12 Q. Does he have a background in chemistry?

13 A. Yes.

14 Q. He is one of the people at Tai He involved in the process,
15 processes, manufacturing processes?

16 A. Yes.

17 Q. And, at your request, did Mr. Chiu prepare a process
18 description for Mr. Shen?

19 A. Yes.

20 Q. And have you seen that process description?

21 A. Yes.

22 MR. NEUMAN: If you could please mark this document
23 as 1 and this as 1A.

24 Q. Mr. Wu, you have been handed what's been marked as Exhibit
25 1. You've been handed what's been marked Exhibit 1. Do you

1 have that in front of you?

2 A. Yes.

3 Q. Do you recognize Exhibit 1?

4 A. Yes.

5 Q. What is it?

6 A. It is the processing description that we provided to
7 Willowood.

8 Q. Is this the process description that you asked Mr. Chiu to
9 prepare in response to Mr. Shen's request in 2013.

10 Q. When was this document -- when was Exhibit 1 provided to
11 Willowood?

12 A. It should be in the first half of 2013.

13 Q. Who prepared this document?

14 A. Chiu Zhenghong.

15 Q. Did he prepare it at your request?

16 A. Yes.

17 Q. Did you see this -- when was the first time you saw this
18 document?

19 A. It was in the first half of 2013. I can't recall
20 specifically when.

21 Q. You see that on this -- on Exhibit 1 -- withdrawn.

22 MR. NEUMAN: At this time, I will move for admission
23 of Exhibits 1 and 1A into evidence."

24 MR. TILLER: Which, Your Honor, is succumbed DX-116.

25 MR. SANTHANAM: Your Honor, we object based on

1 authentication and hearsay.

2 THE COURT: Well, overruled. It will be admitted.

3 MR. TILLER: Thank you, Your Honor.

4 (Reading of deposition of Mr. Wu continued as
5 follows:)

6 Q. "Mr. Wu, if you look at Exhibit 1, do you see there are
7 descriptions of steps set out in this document?

8 A. Yes.

9 Q. Who provided the descriptions" --

10 MR. TILLER: Bonnie, why don't we go to 1A since I
11 think that's the English one.

12 (Reading of deposition of Mr. Wu continued as
13 follows:)

14 Q. "Who provided the descriptions of the processes that are
15 shown for steps 1 through 6?

16 A. The content was provided from our relevant suppliers.

17 Q. Who provided the process description for the condensation
18 step, step number 7?

19 A. It was Chiu Zhenghong.

20 Q. I'd like you to look, please, at Exhibit 1 at -- do you
21 know that this was the document provided to Willowood in
22 response to its request in 2013?

23 A. Yes.

24 Q. If you could please look at the page at the bottom that's
25 marked 26708.

1 At the end of step -- please look in Exhibit 1 at the
2 very end of what is shown as step 5, 'Etherification.'

3 Mr. Wu, if you look at Exhibit 1, do you see that
4 there were descriptions of steps set out in this document?

5 A. Yes.

6 Q. Who provided the descriptions of the processes that are
7 shown for steps 1 through 6?

8 A. The content was provided from our relevant suppliers.

9 Q. Who provided the process description for the condensation
10 step, step number 7?

11 A. It was Chiu Zhenghong."

12 MR. TILLER: Your Honor, I have to apologize. There
13 is a little repetition in this. So we'll go down to page 17,
14 line 2, Alan.

15 (Reading of deposition of Mr. Wu continued as
16 follows:)

17 Q. "Do you see the name of the company, Lianyungang Guoshang
18 Chemical company?

19 A. Yes.

20 Q. Are you personally familiar -- if I refer to this company
21 as 'Guoshang,' will you understand it to be this company
22 Lianyungang Guoshang Chemical?

23 A. Yes, I know.

24 Q. Are you personally familiar with a company called
25 Guoshang -- with Guoshang?

1 A. Yes, I know them.

2 Q. How do you know them?

3 A. Because this company is located in Gannan Industrial Park,

4 which very close to Chen Jia Gang Industrial Park, where my

5 company is located. It's easy for us to know each other.

6 Q. And what does Guoshang do?

7 A. The business is mainly in producing intermediates for

8 pesticides.

9 Q. Do they provide intermediates for azoxystrobin?

10 A. Yes.

11 Q. Can you name some of the pesticides for which Guoshang

12 provides intermediate products?

13 A. They were azoxystrobin, bispyribac sodium, as well as

14 imazapyr acid.

15 Q. Do you personally play any role in deciding the source or

16 sources of intermediate products for the manufacture of

17 azoxystrobin?

18 A. Yes.

19 Q. What role do you play?

20 A. I am the decision-maker.

21 Q. Let me return for a moment to Willowood. After Tai He

22 provided the requested documents to Mr. Shen concerning

23 azoxystrobin, were there further discussions or dealings

24 between Tai He and Willowood with respect to azoxystrobin?

25 A. Yes.

1 Q. What happened?

2 A. Well, we just asked each other about the most updates.

3 For example, they will ask me about the production status.

4 Q. Did there come a time when Tai He supplied Willowood with
5 azoxystrobin?

6 A. Yes.

7 Q. When did that begin?

8 A. In 2014. It was -- it should be in the first half of
9 2014.

10 Q. I'm sorry, let me return to Guoshang. Has Guoshang played
11 any role in the manufacture of azoxystrobin for Willowood
12 Limited?

13 A. What do you mean by 'play a role'?

14 Q. Has Guoshang manufactured any -- conducted any portion of
15 the manufacturing process for azoxystrobin for Willowood
16 Limited?

17 A. Yes.

18 Q. And what role is that? What has Guoshang done in
19 connection with the manufacture of azoxystrobin for Willowood?

20 A. We bought intermediates from them.

21 Q. What intermediate have you bought from Guoshang for the
22 manufacture of azoxystrobin?

23 A. It was the etherification that was mentioned in this
24 material.

25 Q. And how did you decide to use Guoshang as a supplier of

1 that intermediate product for the manufacture of azoxystrobin?

2 A. It was mainly because of quality, cost -- no price.

3 Q. Do you know whether Guoshang sells" --

4 MR. TILLER: I'm sorry. Let me start again.

5 (Reading of deposition of Mr. Wu continued as
6 follows:)

7 Q. "Do you know whether Guoshang sells that intermediate
8 product to others in the market?

9 A. Yes.

10 Q. Are there other suppliers of that intermediate product?

11 A. Yes.

12 Q. When the purchase of that intermediate product that
13 results from the etherification step is made from Guoshang,
14 customarily, can you describe the nature -- how that business
15 transaction works between Tai He and Guoshang?

16 A. Well, the transactions are usually like this. Because
17 pesticides are very seasonal products, first of all we will
18 talk to the suppliers, ask them about their production, and
19 then well look at our own demand. Then they will provide a
20 quotation about their supply for three to six months.

21 Q. A quotation, did you say?

22 A. Yes.

23 Q. And if the decision is made to purchase from a particular
24 supplier, such as Guoshang," who makes the business -- "who
25 makes the business transaction with Guoshang and how is that

1 transaction carried out?

2 A. The transactions are like this. They will provide a
3 quotation to me and then I will decide.

4 Q. And if you decide to purchase from Guoshang, how is that
5 decision communicated to Guoshang and then what communications
6 are there back and forth?

7 A. We are very close to each other, our offices.
8 Particularly, their office is very close to Guangda, where our
9 production happens. It is only 100 -- no, 100 to 200 -- about
10 200 meters away from Guangda.

11 Q. When you purchase -- when you decide to purchase that
12 intermediate from Guoshang, what -- do any documents -- are
13 there any documents exchanged? How are the communications
14 conducted?

15 A. No, no document. We just go to their office and we
16 negotiated, and then it is decided.

17 Q. Has Guoshang supplied all of the intermediate product
18 resulting from the etherification step for the manufacture of
19 azoxystrobin for Willowood Limited?

20 A. Yes. It should be most of it.

21 Q. On those occasions when Guoshang does not provide the
22 intermediate resulting from the etherification step, where does
23 Tai He obtain that intermediate product?

24 A. Then we will purchase from Jiangxi, Fujian, and Jiangsu
25 Provinces.

1 Q. And why would a decision be made to purchase that
2 intermediate product from another company, rather than from
3 Guoshang?

4 A. There are two reasons. The first reason is about the
5 availability, the product availability; because Guoshang has
6 many other customers, sometimes they don't have any stock
7 available for us.

8 The other reason is price. During the peak season,
9 their price is higher. If we can find another supplier whose
10 price is more suitable for us, then we will buy from other
11 suppliers.

12 Q. On those occasions when Guoshang either does not have a
13 supply or its price is too high, its price for that
14 intermediate product is too high, has Tai He or Guangda itself
15 ever carried out the etherification step for Willowood, for the
16 production of azoxystrobin product for Willowood?

17 A. No.

18 Q. On those occasions where Guoshang either does not have the
19 intermediate available or its price is too high, where is the
20 etherification step done and by whom is it done?

21 A. Usually, we will turn to a company in Jiangxi to purchase.

22 Q. Has Guoshang ever provided -- withdrawn.

23 Has Guoshang ever conducted the condensation step in
24 the manufacturing process of azoxystrobin for Willowood?

25 A. No. They are not familiar with it.

1 Q. To your knowledge, who carries out -- who has carried out
2 the condensation step for the manufacture of azoxystrobin
3 product for Willowood Limited?

4 A. It is Guangda. It was us.

5 Q. How do you know that?

6 A. Because I am responsible for the management.

7 Q. Has anybody other than Guoshang carried out of the
8 condensation step for the manufacture of azoxystrobin product
9 for Willowood?

10 A. I don't know. For me, I only carry out condensation in
11 Guangda; at no other company at all, only Guangda. As for
12 whether Willowood has other suppliers for condensation, I don't
13 know.

14 Q. Okay. Fair enough.

15 I'm talking about the azoxystrobin product that Tai
16 He supplies to Willowood Limited. With respect to that
17 product, with respect to that product, has anybody other than
18 Guangda carried out the condensation step for Willowood's --
19 for the manufacture of Willowood's product?

20 A. No.

21 Q. Mr. Wu, could you describe in a little more detail the
22 roles of Tai He and Guangda in the manufacture of azoxystrobin?

23 A. Well, it is a partnered production relationship. We are
24 responsible for quality, technology, as well as procurement,
25 and they provide facilities; they also participate in the daily

1 management of the operations.

2 Q. And so in that connection, have you visited the Guangda
3 plant?

4 A. Yes.

5 Q. And have you observed the steps that are carried out at
6 the Guangda plant to make azoxystrobin for Willowood?

7 A. Yes.

8 Q. And have you discussed those steps with Mr. Chiu of your
9 staff?

10 Q. Do you know whether anyone from Willowood has ever visited
11 the Guangda facility to observe production of azoxystrobin --
12 withdrawn.

13 Do you know whether anyone from Willowood has ever
14 visited the Guangda manufacturing facility?

15 A. Yes, I know.

16 Q. Who from Willowood has visited that facility?

17 A. Mr. Shen and VG.

18 Q. Is that second name Vijay, Vijay Mundhra?

19 A. Yes.

20 Q. Has Mr. Shen visited that facility more than once?

21 Q. How many times has Mr. Shen visited the Guangda plant?

22 A. Twice.

23 Q. When was the first time?

24 A. It was in the first half of 2014, and both visits were in
25 the first half of 2014. Not long after the first visit, the

1 second visit happened."

2 Q. Do you accompany Mr. Shen to the Guangda plant?

3 MR. TILLER: I'm sorry. I read that wrong, Your
4 Honor.

5 (Reading of the deposition of Mr. Wu continued as
6 follows:)

7 Q. "Did you accompany Mr. Shen to the Guangda plant on his
8 first visit?

9 A. Yes.

10 Q. On that occasion, was anyone else from Willowood present?

11 A. Only Mr. Shen alone.

12 Q. What did Mr. Shen do at the plant on that visit?

13 A. He went to see the factory and he also went to the
14 production floor.

15 Q. And do you know what he looked at on the production floor?

16 A. He went to have a look of the overall facility in the
17 production area. He also looked at the equipment and not
18 particularly on the processing.

19 Q. Did he talk with anybody at the Guangda plant while he was
20 there?

21 A. Yes.

22 Q. Did he talk to them in your presence?

23 A. Yes.

24 Q. Whom did he talk to?

25 A. Mr. Li as well as Mr. Sun from Guangda.

1 Q. So the first person is Mr. Li?

2 A. Yes.

3 Q. And who is Mr. Li?

4 A. He was responsible for production in Guangda.

5 Q. And you said the name of the second person was Mr. Shen?

6 A. Sun.

7 Q. Mr. Sun?

8 Q. And who is Mr. Sun?

9 A. Mr. Sun was responsible for azoxystrobin workshop.

10 Q. What do you mean by 'workshop'?

11 A. Because in Guangda factory there were a couple of

12 workshops, and one workshop was for the production of

13 azoxystrobin.

14 Q. And do you recall anything that Mr. Shen from Willowood

15 discussed with Mr. Li or Mr. sun in your presence?

16 A. Mainly he asked about the manufacturing of azoxystrobin

17 the status, as well as the steps.

18 Q. Do you recall any specific questions he had about the

19 steps in the azoxystrobin manufacturing process?

20 A. He asked us which step do we perform in the production of

21 azoxystrobin.

22 Q. And when you say 'He asked us,' whom did he ask?

23 A. Because we were all present.

24 Q. And do you recall what Mr. Shen was told in response to

25 his question about what steps were carried out at the plant?

1 A. Because if you look at the equipment, the equipment was
2 for the last step.

3 Q. 'The last step' being --

4 A. Condensation. Condensation.

5 Q. Did he ask whether any other steps were carried out? Was
6 there a discussion as to whether any other steps were carried
7 out at the Guangda plant?

8 A. Yes, he did.

9 Q. What did he ask?

10 A. He asked about the steps we performed at Guangda and
11 whether we perform condensation only.

12 Q. And what was he told in response to that question?

13 A. We said yes, we only performed condensation.

14 Q. At the time that Mr. Shen visited the plant on the first
15 occasion, was the Guangda facility equipped to carry out the
16 etherification step?

17 A. No.

18 Q. When was the second time that Mr. Shen visited the Guangda
19 facility, to your recollection?

20 A. It was in the first half of 2014.

21 Q. And on that occasion, did you accompany Mr. Shen?

22 A. Yes.

23 Q. And on that occasion, Mr. Mundhra also was present; is
24 that right?

25 A. Yes.

1 Q. On that occasion, what did Mr. Mundhra do at the Guangda
2 facility?

3 A. He had a look of the factory. He also asked us some
4 questions.

5 Q. And whom did he talk to at the facility?

6 A. The same group of people: Mr. Li and Mr. Sun."

7 MR. TILLER: I think you missed a word there, Alan.
8 Sorry.

9 (Reading of deposition of Mr. Wu continued as
10 follows:)

11 A. "Me, Mr. Li and Mr. sun.

12 Q. And did you recall anything that Mr. Mundhra talked to
13 them about?

14 A. He asked about the production, what products do we
15 manufacture in the factory, and he focused mainly on the
16 production of azoxystrobin.

17 Q. Do you recall any specific questions that he asked about
18 the manufacture of azoxystrobin?

19 A. He asked about the production steps as well as the quality
20 control.

21 Q. What did he ask about the production steps?

22 A. He asked about which step do we perform in the production.

23 Q. What was he told?

24 A. The last step.

25 Q. Which is?

1 A. Condensation.

2 Q. Was there a discussion as to whether Guangda carried out
3 any other steps?

4 A. I don't recall.

5 Q. At the time that Mr. Mundhra visited the Guangda facility,
6 did that facility's equipment have the capability to carry out
7 the etherification step -- withdrawn.

8 At the time that Mr. Mundhra visited the Guangda
9 facility, what steps in the manufacture of azoxystrobin did
10 Guangda have the capability to carry out?

11 A. Only the last step, condensation.

12 Q. Does Tai He instruct Gousheng how to make the intermediate
13 product that results from the etherification step?

14 A. No.

15 Q. Does Guangda?

16 A. No.

17 Q. Does Tai He instruct any of its suppliers of raw materials
18 or intermediate products how to make those products?

19 A. No.

20 Q. And does Guangda instruct any of the suppliers of
21 intermediate product or raw materials for the manufacture of
22 azoxystrobin how to make those intermediate products or raw
23 materials?

24 A. No.

25 Q. Do you personally have any ownership interest in Guoshang?

1 A. No.

2 Q. Do you sit on the board of Guoshang?

3 A. No.

4 Q. Are you an officer of Guoshang?

5 A. No.

6 Q. Does anyone associated with Guoshang have any ownership
7 interest in Tai He?

8 A. No.

9 Q. Does anyone associated with Guoshang sit on the board of
10 Tai He?

11 A. No.

12 Q. Is anyone associated with Guoshang involved in the
13 operations or management of Tai He?

14 A. No.

15 Q. Is anyone associated Tai He involved in the operations or
16 management of Guoshang?

17 A. No.

18 Q. Are you familiar with a company called Lianyungang Jinyang
19 Chemical Company.

20 A. Yes.

21 Q. If I refer to this company as 'Jinyang,' will you
22 understand it to be that company?

23 A. Yes, I know.

24 Q. Do you have any ownership interest in Jinyang?

25 A. No.

- 1 Q. Do you sit on the board of Jinyang?
- 2 A. No.
- 3 Q. Are you an officer of Jinyang?
- 4 A. No.
- 5 Q. Does anyone associated with Jinyang have an ownership
- 6 interest in Tai He?
- 7 A. No.
- 8 Q. Is anyone associated with Jinyang -- withdrawn. Is anyone
- 9 associated with Jinyang involved in the operations or
- 10 management of Tai He?
- 11 A. No.
- 12 Q. Is anyone associated with Tai He involved in the
- 13 operations or management of Jinyang?
- 14 A. No.
- 15 Q. Are you familiar with the company Jiangsu Yongkai Chemical
- 16 Company Limited?
- 17 A. Yes, I know.
- 18 Q. If I refer to that company as 'Yongkai,' will you
- 19 understand it to be that company?
- 20 A. Yes, I know.
- 21 Q. Do you have any ownership interest in Yongkai?
- 22 A. No.
- 23 Q. Do you sit on the board of Yongkai?
- 24 A. No.
- 25 Q. Are you an officer of Yongkai?

1 A. No.

2 Q. Does anyone associated with Yongkai have any ownership
3 interest in Tai He?

4 A. No.

5 Q. Does anyone associated with Yongkai sit on the board of
6 Tai He?

7 A. No.

8 Q. Is anyone associated with Yongkai involved in the
9 operations or management of Tai He?

10 A. No.

11 Q. Is anyone associated with Tai He involved in the
12 operations or management of Yongkai?

13 A. No."

14 THE COURT: Stop. Stop. I think that might be a
15 good place for us to take the morning break, as you're about to
16 move into a new topic, and we've been sitting here for while.

17 Ladies and gentlemen, I'm going to excuse you for the
18 morning recess. Please remember not to discuss the case among
19 yourselves or with anyone else. Don't have any contact with
20 the lawyers, parties, or witnesses. Keep an open mind and come
21 back in 15 minutes, five minutes after eleven. The jury is
22 excused. If everyone else will remain seated while they step
23 out.

24 (Jury panel departed the courtroom.)

25 THE COURT: It didn't look like we were going to

1 finish in the next few minutes with that, so I thought that was
2 a good point before you moved into the next topic.

3 Anything -- and I know, you know, you all are very
4 familiar with all of these words. I'm sort of familiar with
5 them. Just remember to not go hugely fast.

6 MR. TILLER: I'm trying my best, Your Honor.

7 THE COURT: You're doing all right. I just want to
8 remind everybody.

9 Anything else? No. Fifteen-minute recess then.

10 (Break taken at 10:50 a.m.)

11 (Break concluded at 11:05 a.m.)

12 THE COURT: Anything we need to take up before the
13 jury comes in?

14 MR. TILLER: No, Your Honor.

15 THE COURT: Would you bring the jury in.

16 (Jury returned.)

17 THE COURT: All right. I believe we are ready to
18 continue with Mr. Wu's testimony, so you may proceed.

19 MR. TILLER: Thank you, Your Honor.

20 (Reading of deposition continued.)

21 BY MR. TILLER:

22 Q. "Have you ever heard of DABCO?"

23 A. Yes, I did.

24 Q. When did you first hear of DABCO?

25 A. April or May last year, April or May 2015.

1 Q. How did you hear about it?

2 A. It was Mr. Shen who came to me and asked me about DABCO.

3 Q. Mr. Shen of Willowood Limited?

4 A. Yes.

5 Q. What did he say?

6 A. He asked us whether we used DABCO in our production.

7 Q. And in response to that inquiry, what did you do?

8 A. I told him we didn't use it.

9 Q. How did you know that?

10 A. Because I participated in the raw material purchase. I had never heard of it before. And then I asked the factory whether they used it in the production, and the answer was no.

13 Q. Did you communicate that to Mr. Shen?

14 A. Yes, I did.

15 Q. Following Mr. Shen's inquiry, did anyone else from Willowood ever raise DABCO with you?

17 A. Yes.

18 Q. When was that?

19 A. October 2015.

20 Q. And who from Willowood raised DABCO with you at that time?

21 A. Well, Vijay as well as a very fatty guy from the United States. I don't know his name.

23 Q. You say the first person was Mr. Mundhra, is that right?

24 A. Yes.

25 Q. And the other person, you say, was from the United States?

1 A. Yes.

2 Q. Did he identify his affiliation?

3 A. Yes.

4 Q. Did he identify who he worked with?

5 A. Willowood.

6 Q. What did they -- they met you together?

7 A. I can't recall whether I met them -- both of them at the
8 same time. But anyway, I met both of them during that period
9 because it was a trade show.

10 Q. And which one of them or both of them discussed DABCO with
11 you at that trade show?

12 A. Yes.

13 Q. Both of them?

14 A. Both of them.

15 Q. What did they say to you about DABCO?

16 A. They asked me again whether we use DABCO. I told him we
17 don't use it.

18 Q. And did they then ask you anything further?

19 A. They hoped that I could ask all the intermediate suppliers
20 whether they used DABCO or not.

21 Q. Did they say why they were concerned about this?

22 A. They said that a certain company holds the patent of this
catalyst.

23 Q. Anything else?

24 A. Nothing else. They just said that there is another

1 company which holds the patent for this catalyst and said that
2 our azoxystrobin contains such catalyst.

3 Q. And were they concerned about that?

4 A. Yes.

5 Q. So what did you do in response to that discussion, if
6 anything?

7 A. When I came back to my company, I asked the suppliers,
8 including suppliers of intermediates, whether they used the
9 DABCO or not.

10 Q. Which suppliers did you ask, if you recall?

11 A. Almost all suppliers of intermediates.

12 Q. And what did they tell you?

13 A. They said they didn't use it; they had never heard of it.

14 Q. And when did you make those inquiries of your suppliers?

15 A. It should be in the summer -- the summer of 2015. I
16 started asking my suppliers in the summer of 2015, and after
17 October of 2015, I asked them once again.

18 Q. You asked them --

19 A. Once again.

20 Q. Mr. Wu, has any Willowood entity ever purchased any
21 product from Tai He or Guanda besides azoxystrobin product?

22 A. No.

23 Q. I'm sorry to hear about that and I will try to keep this
24 very brief. Can you explain what situation your father has
25 been undergoing?

1 A. He's stabilized.

2 Q. Can you explain what situation he had been undergoing
3 before he stabilized?

4 A. He's got disease on his gall bladder.

5 Q. And I understand that he might have had surgery, is that
6 right?

7 A. Yes.

8 Q. When was that surgery?

9 A. It was last month. So today is 31st, am I right? So it
10 was the end of last month, so one month.

11 Q. So your father had surgery at the end of July 2016?

12 A. Yes.

13 Q. Is it fair to say that this has been a difficult time for
14 you?

15 A. Well, it is. It should be better because he is already
16 stabilized.

17 Q. And you are here testifying today, you know, in light of
18 all the -- what's happened to your father, is that right? You
19 are here testifying today despite all that's happened to your
20 father?

21 A. Yes.

22 Q. In fact, the situation with your father was so difficult
23 that did you not want to come Hong Kong, correct?

24 A. Well, at that time, I was asked to come on 7 or 8 August,
25 but at that time, I could not leave. And now he is stabilized

1 and I'm already back to my usual work, so I can leave now.

2 Q. Before today, have you met with any of Willowood's
3 lawyers?

4 A. Before today, yesterday, I met them.

5 Q. So you met with Mr. Neuman and Mr. Davis, who are
6 Willowood's lawyers, yesterday, is that right?

7 A. Yes.

8 Q. How long did you meet with Mr. Neuman and Mr. Davis
9 yesterday?

10 A. A little more than half a day.

11 Q. And did Mr. Neuman and Mr. Davis reach out to you to set
12 up the meeting before yesterday?

13 A. Not by them. Mr. Shen told me.

14 Q. You -- or Mr. Shen reached out to you to set up a meeting
15 between Willowood's lawyers and yourself yesterday, is that
16 right?

17 A. Yes.

18 Q. When did Mr. Shen reach out to you?

19 A. You mean fixing the time or --

20 Q. Correct.

21 A. Fixing time, let me think. It was mid-August.

22 Q. So you and Mr. Davis and Mr. Neuman have known that you'd
23 be meeting in Hong Kong on August 30 for several weeks now, is
24 that right?

25 A. Within two weeks. Well, similar. About 10 days or so.

1 Q. I'm handing a document to be marked by the court reporter
2 as Exhibit 3 -- no, 2.

3 For the record, Exhibit 2 is a letter from me dated
4 August 26 to Mr. Wu. The first page is an English version, the
5 second page is a Chinese translation.

6 Mr. Wu, if you could read either the English version
7 or the Chinese version, I'd like to ask you some questions
8 about this letter.

9 A. Do I read the whole letter?

10 Q. Just to yourself.

11 A. 'Dear Mr. Wu: I represent' -- I don't know how to read
12 it -- 'in the above-referenced litigation against' -- I think
13 is Willowood, I guess -- 'the Willowood. In connection with
14 this litigation, I understand you have spoken with Willowood
15 and its counsel and have agreed to sit for an oral deposition
16 in Hong Kong on August 31, 2016. To the extent that you plan
17 to speak or meet with' -- I think this is Willowood -- 'or its
18 counsel in preparation for this deposition requests that you
19 identify the time and place of the meeting or the details of
20 any telephone conference so that counsel may participate.

21 Q. Mr. Wu, were you aware that --"

22 MR. SANTHANAM: Your Honor, may we have a sidebar?

23 THE COURT: Okay.

24 (Bench conference as follows:)

25 MR. SANTHANAM: Both sides had designated portions of

1 Mr. Wu's transcript --

2 THE COURT: Yes.

3 MR. SANTHANAM: We'd indicated that we would rely on
4 it either on our rebuttal case, et cetera. It looks as though
5 they've combined all of them. I mean, so portions of what
6 they're reading --

7 THE COURT: Uh-huh.

8 MR. SANTHANAM: -- are Syngenta's designations.

9 MR. COUGHLIN: That they had not designated.

10 MR. TILLER: Right. We're just reading -- we thought
11 the understanding was we were to put everything in.

12 THE COURT: Is there some problem with that?

13 MR. SANTHANAM: Well, to the extent that we put it
14 on, we would like to have the video and show the documents and
15 have them admitted. This is going through and we're not seeing
16 the documents at all.

17 MR. COUGHLIN: We have the video set up for our
18 designations.

19 THE COURT: Well, I don't know.

20 MR. TILLER: All right. I'm not sure where --

21 MR. SANTHANAM: I mean, it's fine, we could go
22 forward. But we would like the opportunity at least to put on
23 the portions that we say --

24 THE COURT: We may have to talk about that, then, at
25 lunch or before your rebuttal, just to --

1 MR. TILLER: Should I keep reading?

2 THE COURT: I don't know.

3 MR. COUGHLIN: We're surprised. We didn't know they
4 were doing our dep.

5 MR. SANTHANAM: Because with Mr. Reichman, it was set
6 out --

7 THE COURT: Keep your voice down. Well, I don't know
8 what to tell you what to do because I don't know -- I don't
9 have it in front of me. So --

10 MR. TILLER: Let me see if it's the portion that's
11 just ours. And then I'll --

12 THE COURT: Okay. Then we have to do the
13 counter-designations for the surrounding part. We certainly
14 had some repetition with Mr. Reichman, so -- which everybody
15 noticed. So just do the best you can.

16 (Bench conference concluded.)

17 THE COURT: All right. I think, ladies and
18 gentlemen, we've had a little confusion about the thing I made
19 the mistake about earlier, whose -- who wants to put which part
20 of the witness's testimony before you at what time. So, I'm
21 going to give them a minute to just get that straightened out.

22 MR. TILLER: Okay. And I apologize, Your Honor.

23 THE COURT: That's all right.

24 MR. TILLER: I don't think I helped with the
25 confusion. So we -- I'll have to find where we are right now,

1 Alan. Give me a second.

2 THE COURT: All right. I think you can start on page
3 68, it looks like.

4 MR. TILLER: Yup. Got it. Are you there, Alan?

5 MR. DUNCAN: Yes.

6 (Reading of deposition continued.)

7 BY MR. TILLER:

8 Q. Okay. "And do you understand that Tai He has a
9 contractual relationship with Willowood Limited, is that right?

10 A. What contract?

11 Q. Tai He has a supply agreement with Willowood, is that
12 right?

13 A. Yes.

14 Q. What is your understanding of that supply agreement?

15 A. This supply agreement means that we sell azoxystrobin to
16 them.

17 Q. Now, setting aside who performs the manufacturing process,
18 is it your understanding that the azoxystrobin that Tai He
19 supplies to Willowood is manufactured according to the process
20 in Exhibit 3?

21 A. Which is Exhibit 3? This is Exhibit 1.

22 Q. I'm referring to Exhibit 3, which is a stamped copy. The
23 first page is marked as WW17."

24 MR. TILLER: And Your Honor, just to clarify the
25 record, Exhibit 3 in the deposition is Defendant's Exhibit 17.

1 THE COURT: All right. Go ahead.

2 (Reading of deposition continued.)

3 THE WITNESS: "Please repeat your question.

4 BY MR. TILLER:

5 Q. Is it your understanding that the azoxystrobin that Tai He
6 supplies to Willowood is manufactured according to the process
7 set forth in Exhibit 3?

8 A. Yes.

9 Q. For the azoxystrobin that Tai He supplies to Willowood,
10 that azoxystrobin is manufactured using the etherification
11 process set forth in Exhibit 3, is that right?

12 A. As for the specific situation, I don't know very well
13 because the etherification, all those steps are performed by
14 other companies, other factories, and we just purchase
15 intermediates from them, according to this exhibit.

16 Q. When you buy the etherification intermediate from
17 Guosheng, they know that you're buying it to make azoxystrobin,
18 correct?

19 A. Yes.

20 Q. I'm only asking you generally about Exhibit 3. This
21 document is on Tai He letterhead. Do you see that?

22 A. Yes.

23 Q. It has a Tai He stamp?

24 A. Yes.

25 Q. So this document was provided by Tai He, is that right?

1 A. Yes.

2 Q. Mr. Shen and Mr. Mundhra instructed Tai He to have
3 the -- let me start again, Your Honor. Mr. Shen and
4 Mr. Mundhra instructed Tai He to have the manufacturing process
5 split up amongst the different factories, correct?"

6 MR. DUNCAN: Could you please refer me to a line,
7 page and line?

8 MR. TILLER: Yeah. We're on 88, line 20 --

9 MR. DUNCAN: Thank you.

10 MR. TILLER: Okay. So let me read that again. Do
11 you have it?

12 MR. DUNCAN: Yes.

13 (Reading of deposition continued.)

14 BY MR. TILLER:

15 Q. "Mr. Shen and Mr. Mundhra instructed Tai He to have the
16 manufacturing process split up amongst the different factories,
17 correct?"

18 A. No."

19 MR. TILLER: Do you have it now, Alan? I'm sorry.

20 MR. DUNCAN: If you could give me a -- is this --

21 THE COURT: I think he's reading off -- not the
22 notebook now, right? You're using --

23 MR. TILLER: Correct. The new one that I gave you.
24 I'm sorry.

25 MR. DUNCAN: All right. And if you wouldn't mind

1 giving me page and line one more time, please.

2 THE COURT: Page 88.

3 MR. TILLER: Page 88, line 21.

4 MR. DUNCAN: Thank you. I have it.

5 MR. TILLER: Let me start there again. Sorry.

6 (Reading of deposition continued.)

7 BY MR. TILLER:

8 Q. Mr. Shen and Mr. Mundhra instructed Tai He to have the
9 manufacturing process split up amongst the different factories,
10 correct?

11 A. No.

12 Q. When they first came in the first half of 2014, they
13 wanted to confirm that the manufacturing process had been split
14 up amongst different factories, correct?

15 A. I don't think they had any purpose of their visit. They
16 just went there and had a look. And even if they had a
17 purpose, they didn't tell us, and we don't know, and we just
18 told him how the production was going in the factory.

19 Q. You took Mr. Shen to each of the different factory
20 locations, is that right?

21 A. Not all of them.

22 Q. You took Mr. Shen to at least three different factory
23 locations, correct?

24 A. Yes.

25 Q. Mr. Shen asked you to take him to three different factory

1 locations, isn't that right?

2 A. Yes.

3 Q. And Mr. Shen wanted to confirm that the manufacturing
4 process had at least three different factories, correct?

5 A. Yes.

6 Q. And you've testified that it's your belief that DABCO is
7 not used in the manufacturing process for azoxystrobin, is that
8 right?

9 A. Yes. Not at our facility.

10 Q. When you say "our facility," are you referring to Guanda?

11 A. Guanda, yes.

12 Q. And if we can go back to Exhibit 1 that you were
13 discussing with Mr. Neuman at the beginning of this deposition.
14 Can you take it out? Does Exhibit 1 say that Tai He performs
15 the condensation step?

16 A. It is not indicated at the end of the paragraph, however,
17 this document was prepared by Tai He. We just approved all of
18 these outsource intermediates from third parties there, so for
19 the rest, it is our own step.

20 Q. So Exhibit 1 does not indicate who performs the
21 condensation step?

22 THE COURT: I'm sorry. Can you slow down and speak
23 up just a little. I can't hear you.

24 MR. TILLER: I'm sorry. Too far away from the mike.

25 BY MR. TILLER:

1 Q. So, Exhibit 1 does not indicate who performs the
2 condensation step?

3 A. It is not written at the last paragraph there but it is
4 meant to say that this is our own document and that we perform
5 it.

6 Q. Is it Guanda that performs the condensation step?

7 A. It is the cooperation between Tai He and Guanda in
8 production.

9 Q. You testified that Guanda is a separate entity from Tai
10 He, correct?

11 A. Yes.

12 Q. So it's not Tai He who supplies the azoxystrobin to
13 Willowood?

14 A. It is by Tai He.

15 Q. How can Tai He and Guanda be separate, but at the same
16 time, Tai He is the one that supplies and manufactures
17 azoxystrobin?

18 A. Well, the cooperation is like this between Guanda and Tai
19 He. We provide the processing description, we conduct quality
20 control, and we are responsible for technical issues. Guanda
21 provides the plant, the factory, the equipment, as well as the
22 workers. So it is our cooperation for production.

23 Q. Mr. Wu, let me ask you this way. So you understand that
24 in registering azoxystrobin in the United States, Tai He was
25 provided an establishment registration. You understand that

1 Tai He was provided an establishment registration by the United
2 States Government for the manufacture of azoxystrobin, correct?

3 A. Yes.

4 Q. Are you saying that it's now a completely different entity
5 that manufactures the azoxystrobin technical?

6 A. It is not entirely independent entity for Guanda because
7 it is entrusted production cooperation. We provide the
8 conditions that are needed for the production of azoxystrobin,
9 and they provide venue, equipment, as well assistance for the
10 production.

11 Q. Mr. Wu, I will represent to you that in applying for and
12 obtaining Tai He's establishment registration, the EPA in the
13 United States was told that location of manufacture was Tai He.
14 Was that wrong?

15 A. I don't know.

16 Q. Tai He closely oversees the condensation step, but the
17 location of the condensation step is not Tai He, correct?

18 A. Yes.

19 Q. Mr. Wu, I'd like you to turn back to Exhibit 1. In
20 Exhibit 1, the manufacturing process for azoxystrobin includes
21 an etherification step --"

22 THE COURT: If you could slow down and keep your
23 voice up.

24 MR. TILLER: Sorry. 116A.

25 THE COURT: Go ahead.

1 MR. TILLER: I'm just waiting for the document to
2 come up. Sorry, Your Honor.

3 Please go to "etherification."

4 (Reading of deposition continued.)

5 BY MR. TILLER:

6 Q. "Mr. Wu, I'd like you to turn back to Exhibit 1. In
7 Exhibit 1, the manufacturing process for azoxystrobin includes
8 an etherification step and a condensation step, is that right?

9 A. Yes.

10 Q. Did Tai He ever investigate a process for manufacturing
11 azoxystrobin that didn't include -- when you told Syngenta's
12 counsel earlier that to your knowledge the submissions to the
13 United States Environmental Protection Agency to support the
14 azoxystrobin registrations were accurate, what documents were
15 you referring to?

16 A. This one.

17 Q. What exhibit number?

18 A. One -- Exhibit 1."

19 (Reading of deposition concluded.)

20 MR. TILLER: That's it, Your Honor.

21 THE COURT: All right. You can call your next
22 witness as soon as Mr. Duncan gets down from the stand.

23 MR. TILLER: I'm going to go get him.

24 THE COURT: All right.

25 MR. SANTHANAM: Your Honor, we understand that there

1 may be an interpreter used with respect to this witness.

2 THE COURT: Well, we'll see how -- let them get
3 going.

4 MR. DAVIS: Our next witness is Shen Shaojun.

5 (Witness sworn by the clerk.)

6 THE COURT: Did you answer out loud?

7 THE WITNESS: Do I have to restate again?

8 THE COURT: No, just yes or no.

9 THE WITNESS: Yes.

10 THE COURT: Okay. We need to swear the interpreter
11 as well.

12 (Interpreter sworn by the clerk.)

13 THE COURT: Come on around. The witness will take
14 the witness stand, and the interpreter can stand kind of on the
15 other side of him. Just don't block my view of the jury.

16 So, ladies and gentlemen, I think this witness may
17 testify to some extent in English. Is that right, Mr. Davis?

18 MR. DAVIS: That's correct.

19 THE COURT: But the interpreter is available here as
20 English is not, as I understand it, his first language. And
21 so -- I assume none of you speak Mandarin? Okay. Obviously,
22 the interpreter is here. He is under oath to interpret
23 questions and answers exactly, and you'll take the testimony
24 through the interpreter when it's offered that way just as if
25 it was coming out of the witness's mouth in English to the

1 extent that you can. So all right. Go ahead.

2 MR. DAVIS: May I distribute witness binders, please?

3 THE COURT: You may go ahead.

4 SHEN SHAOJUN,

5 DEFENDANT'S WITNESS, SWORN AT 11:30 A.M.

6 DIRECT EXAMINATION

7 BY MR. DAVIS:

8 Q. Please state your name.

9 A. My name is Shen Shaojun.

10 Q. Are you often referred to as SSJ?

11 A. Yes.

12 Q. What is your primary language?

13 A. Chinese Mandarin.

14 Q. Okay. Do you understand English?

15 A. A little.

16 Q. Okay. Do you speak English?

17 A. A little.

18 Q. And can you read English?

19 A. Yes.

20 Q. How often do you communicate in English?

21 A. I like to English (unintelligible) but speaking is a few
22 times per week.

23 Q. Do you have a college degree?

24 A. Yes.

25 Q. What is the major or the subject of your college degree?

1 A. My major in university is -- I was in electrical
2 chemistry.

3 Q. And what year did you receive that?

4 A. In 1998.

5 Q. And after receiving your degree, with whom were you
6 employed?

7 A. I worked for (unintelligible) Chemical Quality Inspection
8 Station in -- for chemicals.

9 Q. So Quality Inspection Station, was that a government
10 agency in China?

11 A. It is government.

12 Q. And what were your responsibilities at the quality
13 inspection station for the Chinese government?

14 A. We do the quality control and the inspection over there,
15 pesticide quality produced by the pesticide manufacturer in
16 (unintelligible).

17 THE COURT: Just a second. Sometimes, ladies and
18 gentlemen, so -- I've been a judge a long time, so I've heard
19 people speak when English is not their first language. It
20 can take a little bit, just like with the Scottish witness, to
21 get used to the accent.

22 THE WITNESS: Sorry.

23 THE COURT: That's okay. No, no. I barely speak
24 English. So if you need anything repeated, as you're getting
25 used to it, it's okay. It's no reflection on the witness. We

1 all need to adjust to different accents. So just, you know, I
2 think we'll all settle in and get used to it fairly quickly;
3 but if you do need something repeated, just, you know, say can
4 you repeat that, and he can do that.

5 I think the court reporter needed the last answer,
6 which was about the work he did for the government. If you
7 could just repeat and tell us again.

8 THE WITNESS: I can speak it in Chinese?

9 THE COURT: Say again?

10 THE WITNESS: May I ask the translator to help?

11 THE COURT: Yes, absolutely.

12 THE WITNESS: (By Interpreter.) I was responsible
13 for supervising and inspecting agrichemical pesticides produced
14 in (unintelligible) Province.

15 BY MR. DAVIS:

16 Q. And how long were you a quality inspection officer in the
17 Say Jing Province?

18 A. Four years.

19 Q. Okay. And who did you work for next after leaving the
20 quality inspection office?

21 A. Willowood Limited.

22 Q. What is the business of Willowood Limited?

23 A. Trading in agrichemicals.

24 Q. Trading? Was that the word you said?

25 A. Trading, sale of agrichemical.

1 Q. And when did you start at Willowood Limited?

2 A. 2002.

3 Q. And what was your first title at Willowood Limited?

4 A. First title was registration manager.

5 THE COURT: What kind of manager?

6 THE WITNESS: Registration.

7 THE COURT: Registration?

8 THE WITNESS: Yes.

9 THE COURT: Thank you.

10 BY MR. DAVIS:

11 Q. And how long did you have the position of registration
12 manager?

13 A. Five years.

14 Q. Until about 2007 then?

15 A. Up to 2007.

16 Q. What is your position today, your title?

17 A. General manager.

18 Q. Okay. Where is your -- where do you work for Willowood
19 Limited? What state?

20 A. I work for Willowood Hangzhou office.

21 Q. Hangzhou office. And when did you take that position as
22 the general manager of the Hangzhou office of Willowood
23 Limited?

24 A. Pardon?

25 Q. When did you start the position as the general manager of

1 Willowood Hangzhou office?

2 A. 2007.

3 Q. What were your responsibilities as registration manager
4 from 2002 to 2007 at Willowood Limited?

5 A. I collecting -- I coordinated with the pesticide
6 manufacturer in China and collecting documents which the
7 customer need to do the registration and send it to Hong Kong
8 office.

9 Q. What are your duties and responsibilities today as the
10 general manager of the Hangzhou office?

11 A. I take responsibility for the company -- may I ask help?

12 THE COURT: Yes.

13 THE WITNESS: (By interpreter) I'm responsible for
14 day-to-day operation of the company.

15 BY MR. DAVIS:

16 Q. To whom do you report as the general manager of the
17 Hangzhou office?

18 A. I respond to Mr. Vijay Mundhra. He's the boss.

19 Q. He's the boss?

20 A. Yes.

21 Q. Now that you're no longer the registration manager, are
22 there any people at Willowood Limited who perform those
23 responsibilities?

24 A. Yes. In Hangzhou office is Sophia is now the manager of
25 registration.

1 Q. Is there anyone in the Hong Kong office that performs
2 that --

3 A. Hong Kong office is Rajesh Kumar.

4 Q. Rajesh?

5 A. Yes.

6 Q. What's his last name?

7 A. Kumar.

8 Q. Can you spell that for the court reporter?

9 A. K-U-M-A-R, as I remember.

10 Q. Thank you. How many customers, approximately, does
11 Willowood have -- Willowood Limited?

12 A. Willowood Limited is more than 40 countries.

13 Q. Different -- 40 countries?

14 A. Yes, 40. More than 40.

15 Q. Do you know how many customers it has in those 40
16 countries?

17 A. I'm sure it would be more than 50.

18 Q. And how many different agrichemicals does Willowood
19 Limited sell to its customers?

20 A. If including technical and formulation, then it should be
21 more than 100.

22 Q. Okay. Is azoxystrobin one of those chemicals that
23 Willowood Limited sells to its customers?

24 A. Yes.

25 Q. In either of your positions at Willowood Limited as

1 registration manager or general manager, have you ever directly
2 communicated with the United States Environmental Protection
3 Agency?

4 A. No.

5 Q. Are you familiar with the process for seeking approval
6 from the United States Environmental Protection Agency to sell
7 an agrichemical in the US.

8 (Interpreter repeating question.)

9 A. No.

10 Q. What do you know about the requirements for registration
11 of an agrichemical at the EPA?

12 A. We should provide the manufacturing process.

13 Q. Do you review applications submitted on behalf of
14 Willowood USA to the United States EPA, Environmental
15 Protection Agency?

16 A. No.

17 Q. Have you ever reviewed an application submitted to the
18 Environmental Protection Agency?

19 A. No.

20 Q. Do you review applications submitted on behalf of other
21 customers to the agencies of other Governments for
22 registration?

23 A. No.

24 Q. When Willowood applies for registration at the EPA, how
25 does the process information concerning the manufacture of the

1 product find its way to the EPA?

2 (Interpreter repeating question.)

3 THE INTERPRETER: The company provided information to
4 us. We then translate it into English. We will submit the
5 information to the consultant with Willowood.

6 THE COURT: With what? Can you just say again?

7 THE WITNESS: (By interpreter) The company provided
8 the information. We then translate into English. We will
9 provide a translated version to Willowood Hong Kong, and the
10 Willowood Hong Kong will then provide it information to
11 consultant to Willowood USA.

12 BY MR. DAVIS:

13 Q. So the first part of your answer you referred to "the"
14 company. What company are you referring to that provides the
15 information initially?

16 A. Manufacturer.

17 Q. And now you refer to a consultant. What's the
18 consultant -- or who is a consultant that you're referring to?

19 A. Consultant is (unintelligible) to registration in EPA.

20 Q. So you're referring to regulatory consultants that help
21 Willowood USA make applications to the EPA?

22 A. Yes.

23 Q. So just to confirm my understanding of your answer, the
24 manufacturing companies provide information to Willowood
25 Limited. That's translated by Willowood Limited and then

1 provided to Willowood Hong Kong who then provides it to the
2 regulatory consultants. Is that correct?

3 A. Yes.

4 Q. And who in Willowood Hong Kong takes care of that
5 transition, that transfer of information?

6 A. Registration manager Sophia.

7 Q. Who in Hong Kong -- Sophia is --

8 A. Hong Kong is Rajesh Kumar.

9 Q. Are you aware of a company by the name of Yancheng Tai He
10 Chemicals Company?

11 A. Yes.

12 Q. And is that company sometimes referred to as Tai He or Tai
13 He?

14 A. Yes.

15 Q. What is the relationship between Willowood Limited and Tai
16 He?

17 A. Willowood buy agrichemical from Tai He.

18 Q. And is azoxystrobin among the chemicals that Willowood
19 Limited purchases from Tai He?

20 A. Yes.

21 Q. Okay. When did Willowood Limited first purchase
22 azoxystrobin from Tai He for sale to Willowood USA?

23 A. In 2014.

24 Q. Okay. Does Willowood Limited sell azoxystrobin in the US?

25 A. No. Willowood Limited only buy from Tai He and supply to

1 Willowood USA. Then Willowood USA will sell in the market.

2 Q. When you say the market, are you referring to the US
3 market?

4 A. US market.

5 Q. Does Willowood Limited sell azoxystrobin to customers in
6 any other countries other than the US?

7 A. Yes.

8 Q. Okay. And, approximately, how many other countries does
9 Willowood Limited have customers for azoxystrobin?

10 A. I don't remember exactly. It should be more than ten.

11 Q. What decisions does Willowood Limited make about shipment
12 method or destinations of azoxystrobin that Willowood Limited
13 sells to Willowood USA?

14 A. Willowood Limited will not make any decision. The
15 decision was made by Willowood USA only.

16 Q. Do you know the president of Tai He?

17 A. Yes.

18 Q. And what is his name?

19 A. His name is Wu Xiaolong.

20 THE COURT: His name is what?

21 THE WITNESS: Wu Xiaolong.

22 BY MR. DAVIS:

23 Q. Is he sometimes referred to as Mr. Wu?

24 A. Yes.

25 Q. How did you first come to meet Mr. Wu?

1 A. I meet Mr. Wu several years before when we take part in
2 the agrichemical exhibition in Shanghai, and he was introduced
3 by some friend.

4 Q. Do you remember approximately what year that agrichemical
5 exhibition in Shanghai took place?

6 A. Should be 2010.

7 Q. Okay. And when you first met Mr. Wu in or around 2010,
8 did he tell you what chemicals he manufactured?

9 A. Yes, we talked what particular he produced including
10 azoxystrobin and some other pesticide product.

11 Q. So Mr. Wu was already producing azoxystrobin in 2010?

12 A. Yes.

13 Q. Did there come a time when Willowood Limited began to
14 purchase azoxystrobin from Tai He for resale to Willowood USA?

15 A. Pardon?

16 Q. Did there come a time when Willowood Limited purchased
17 product from Tai He, azoxystrobin product, for sale to
18 Willowood USA?

19 A. Yes.

20 Q. Okay. When did that -- tell me how that came about.

21 A. Should be in 2013, Mr. Brian from Willowood USA --

22 THE COURT: Mr. Brian?

23 THE WITNESS: Yeah, Brian.

24 THE COURT: Okay. Go ahead.

25 THE WITNESS: Brian asked me -- asked us to check if

1 I could get some manufacturer of azoxystrobin in China, and we
2 talked to some manufacturers in China, including Suli or
3 NutriChem, which already producing azoxystrobin by that time,
4 and also including Tai He. But by that time, Suli and
5 NutriChem, these factory, they have already -- they are partner
6 in U.S.A. market but Tai He didn't have. So, finally, we
7 decided we go with Tai He, and we signed an exclusive agreement
8 with them.

9 Q. When did you sign that exclusive agreement with Tai He?

10 A. 2013.

11 Q. Okay. And that exclusive supply agreement was for the
12 production of what -- or the supply of what chemical?

13 A. Only for azoxystrobin.

14 Q. Who is the primary person at Willowood Limited that has
15 contact with Tai He?

16 A. It is me.

17 Q. Okay. And who is your primary contact at Tai He?

18 A. Mr. Wu Xiaolong.

19 THE COURT: So I think that's Mr. Wu.

20 THE WITNESS: Mr. Wu.

21 BY MR. DAVIS:

22 Q. Is there anyone else at Tai He that you speak with?

23 A. Pardon?

24 Q. Is there anyone else at Tai He that you communicate with?

25 A. Mostly only with Mr. Wu for me.

1 Q. Does anyone else affiliated with Willowood Limited
2 interact with anyone at Tai He regarding Tai He's manufacture
3 of azoxystrobin for Willowood Limited?

4 A. Yes, there's another two person in Hangzhou office contact
5 with them. First is our registration manager, Sophia. He's
6 contacting with Tai He's production and technical manager to
7 collect the manufacturing process from them; and, secondly, our
8 logistic manager, Ms. Fei Wang. She contact with them for the
9 shipment of azoxystrobin to US -- Willowood USA.

10 THE COURT: And I did not follow the name of the
11 person who deals with the shipping, so if you'll just cover
12 that.

13 BY MR. DAVIS:

14 Q. So the person doing the shipping was Fei Wang.

15 A. Fei Wang, yes.

16 Q. That's a woman?

17 A. Woman, lady.

18 Q. And the first person was Sophia Wang, correct, who deals
19 with --

20 A. Sophia.

21 Q. And what are her responsibilities?

22 A. Registration manager.

23 Q. Is she the one that collects the information from the
24 factory?

25 A. Yes.

1 Q. After Willowood Limited had signed the exclusive supply
2 agreement with Tai He for the supply of its azoxystrobin, what
3 happened next in terms of Willowood Limited being able to buy
4 azoxystrobin from Tai He and sell it to Willowood USA?

5 A. The next step, then we ask Tai He to provide the
6 manufacturing process of azoxy to us, and also we ask a sample
7 from them.

8 Q. A sample of azoxystrobin product?

9 A. Yes.

10 Q. Okay. And why did you ask for a sample of the product and
11 a description of the manufacturing process?

12 A. It is required by EPA.

13 Q. Okay. Is it required by any other agencies or other
14 governments?

15 A. Mostly, yes.

16 Q. Did Tai He, in fact, give Willowood Limited a sample and a
17 description of manufacturing process?

18 A. Yes.

19 Q. Who at Willowood Limited did Tai He give the process
20 description to?

21 A. Sophia.

22 Q. What does Sophia do with that process description?

23 A. Sophia -- because Tai He provided in Chinese documents to
24 us, and Sophia would translate into English, then it was sent
25 to me, and she will keep it in file, company file.

1 Q. Okay. Please turn to the binder in front of you to the
2 tab marked DTX 64. You'll see an e-mail from Sophia to Vijay
3 with -- and to you with the attachment entitled "Tai He
4 Manufacturing Azoxystrobin.doc." Do you see that document?

5 A. Yes.

6 Q. Please turn to the attachment, which begins on the next
7 page and continues to the end of the exhibit. Is this the
8 translation that Sophia did of the manufacturing process that
9 Tai He first provided to Willowood Limited after it signed the
10 exclusive supply agreement with Tai He?

11 A. Yes.

12 Q. Has this translation of the azoxystrobin manufacturing
13 process by Tai He been maintained by Willowood Limited in the
14 ordinary course of its business?

15 A. Pardon?

16 Q. Has this translation, this document, been kept by
17 Willowood Limited in its files in the ordinary course of its
18 business?

19 A. Yes.

20 MR. DAVIS: Your Honor, I move to admit defendant's
21 Exhibit 64.

22 MS. BALTZER: No objection.

23 THE COURT: It'll be admitted.

24 BY MR. DAVIS:

25 Q. Mr. Shen, I'd like to direct your attention to the top of

1 the second page of Exhibit 64 that's entitled Azoxystrobin
2 Manufacturing Process. What company is identified in this
3 document as performing the hydrolysis step?

4 A. It's the Lianyungang Jinyang Chemical.

5 Q. Is this company sometimes referred to as Jinyang for
6 short?

7 A. Yes.

8 Q. Is there any company identified as carrying out the
9 cyclization process in this document?

10 A. No.

11 Q. Is there any company identified in this document as
12 carrying out the Methylene step?

13 A. No.

14 Q. What company is identified in this document as carrying
15 out the chlorination step?

16 A. It is Lianyungang Jinyang.

17 Q. And is this company sometimes referred to as Guosheng?

18 A. Yes.

19 Q. Is there any company identified in this document as
20 carrying out the etherification process step?

21 A. No.

22 Q. Turning to the next page, is there any -- what company is
23 identified as carrying out the dehydration step?

24 A. Jiangsu Yongkai Chemical.

25 Q. And is this company sometimes referred to as Yongkai?

1 A. Yes.

2 Q. Is there any -- and is there any company that's identified

3 in this document as carrying out the condensation step?

4 A. No.

5 Q. Does this document identify any steps that are conducted

6 by Tai He?

7 A. No.

8 Q. Are you familiar with a company called Pyxis?

9 A. Yes.

10 Q. And what is the business of Pyxis?

11 A. As I know, Pyxis is registration consultant of Willowood

12 USA.

13 Q. And this is for registration with the EPA?

14 A. Yes.

15 Q. What information did you provide to Pyxis in connection

16 with the work that Pyxis was doing for the EPA registration of

17 azoxystrobin?

18 A. We provide them for the manufacturing process of

19 azoxystrobin.

20 Q. Okay. And they use that information for the EPA

21 application. Is that your understanding?

22 A. Yes.

23 Q. Okay. Please turn in your binder to the tab marked PX-9

24 and previously entered into evidence and identified as the EPA

25 application filed by Pyxis relating to azoxystrobin technical.

1 Take a moment to flip through this document. Mr. Shen, have
2 you ever seen this document before?

3 A. No.

4 Q. Please turn to -- go ahead and let's publish this as well.
5 Please turn to pages -- page 13 of the exhibit. This is Bates
6 No. WW019074. And at the top, Mr. Shen, you'll see it says
7 description of the production process. Tell me when you're
8 there. Do you see it?

9 A. Yes.

10 Q. Okay. If you look through the following pages, you'll see
11 that it identifies each of the steps that were identified on
12 the process document we just looked at. And I'd like you to
13 turn to page 22 of the document, which is identified by Bates
14 No. WW019083. And you'll see at the top it says
15 "etherification." Tell me when you're there.

16 A. Yes.

17 Q. If you look at the bottom of the first paragraph, at that
18 page, the last sentence you'll see says, "This step is carried
19 out at Yancheng Tai He Chemical Company? Do you see that?

20 A. Yes.

21 THE COURT: Where is that, I'm sorry?

22 MR. DAVIS: Bottom of the -- first paragraph, last
23 sentence.

24 BY MR. DAVIS:

25 Q. Mr. Shen, do you know how Pyxis acquired the information

1 in this document that says that Tai He performed the
2 etherification step?

3 A. Should it be sent by us.

4 Q. From Willowood Limited?

5 A. Yes.

6 Q. Do you know who at Willowood Limited sent her that
7 information?

8 A. Sophia or me, maybe.

9 Q. Did anyone from Tai He tell you that Tai He performed the
10 etherification step?

11 A. No.

12 Q. Did Sophia tell you that Tai He performed the
13 etherification?

14 A. No.

15 Q. Then why did you tell Pyxis that Tai He performed the
16 etherification step?

17 THE WITNESS: May I ask help?

18 THE COURT: Yes, from the interpreter?

19 THE WITNESS: Yes.

20 THE COURT: Yes, you can.

21 THE INTERPRETER: In the document that we just --

22 THE COURT: Wait one second. We need a mic for the
23 interpreter or if I can just ask you to speak loud.

24 THE INTERPRETER: I speak louder.

25 THE COURT: Okay. Thank you.

1 THE INTERPRETER: In the document that we just
2 covered, that is Document 64, it specified Jinyang would do the
3 dehydration process, Guosheng would do the chlorination and
4 Yongkai would do the hydrolysis for -- I'm sorry. The
5 hydrolysis for Jinyang, and Guosheng would perform
6 chlorination, Yongkai would perform dehydration, and I assume
7 the rest of the steps will be performed by Tai He.

8 BY MR. DAVIS:

9 Q. Did you -- and you were referring to Defendant's Exhibit
10 64 when you said that document?

11 A. Yes.

12 Q. Did you learn at some later time that your assumption that
13 Tai He performed all of the remaining steps was incorrect?

14 A. Yes.

15 Q. Can you explain how you learned that those assumptions
16 about who performed what, the remaining steps, were incorrect?

17 A. May I ask help?

18 THE COURT: Yes.

19 THE INTERPRETER: We asked Tai He to provide the
20 final version --

21 THE COURT: I'm sorry, could you start over again and
22 speak up a little.

23 THE INTERPRETER: We asked Tai He to provide a final
24 version and specify each step performed by who and provided the
25 information using the company letterhead and stamped the final

1 document to us, that's when I realized.

2 BY MR. DAVIS:

3 Q. Please turn, Mr. Shen, in your binder to Defendant's
4 Exhibit 17. This has been admitted. If you can publish that,
5 please.

6 Mr. Shen, do you recognize Defendant's Exhibit 17?

7 A. Yes.

8 Q. What is this document?

9 A. This is a final documents which Tai He provide to us.

10 Q. And why did Tai He provide a second process document on
11 letterhead with a Tai He stamp?

12 A. It is required by registration process.

13 Q. By Willowood Limited's registration process?

14 A. Yes, also for some customer country requirement.

15 THE COURT: As the country's requirement?

16 THE WITNESS: I mean, not only for USA, also
17 including other countries.

18 BY MR. DAVIS:

19 Q. And do you know when Willowood Limited obtained the
20 document at -- identified at Defendant's Exhibit 17?

21 A. It should be by end of 2013.

22 Q. What did you do with this document once it was received
23 from Tai He?

24 A. We send it to Brian, Willowood USA, and also Rajesh in
25 Hong Kong.

1 Q. Okay. Why didn't you send it to Pyxis?

2 A. No. Normally this contacting this registration with Pyxis
3 is normally by Rajesh. It's not -- I mean Rajesh in Hong Kong
4 office.

5 Q. So why did you provide the original process information to
6 Pyxis instead of Rajesh?

7 A. Sometimes if US requires documents urgent or maybe Rajesh
8 was not in Hong Kong office or he's on trip, he's on a trip,
9 then we will contact with the consultant directly.

10 Q. Directly?

11 A. Yes.

12 THE COURT: So just to be sure I understood; you said
13 if it was urgent or if Rajesh was on a trip --

14 THE WITNESS: Yes.

15 THE COURT: -- you might do it directly?

16 THE WITNESS: Yeah, we have contact with consultant
17 direct.

18 THE COURT: Okay.

19 BY MR. DAVIS:

20 Q. Mr. Shen, do you recall giving a deposition in Washington,
21 D.C. in connection with this case?

22 A. Yes.

23 Q. During your deposition, you testified that you went to
24 Guosheng and to Tai He to confirm that the manufacturing was
25 being done consistent with the declaration in the EPA

1 application. Do you recall that testimony?

2 A. Yes.

3 Q. When you said that, when you testified that you went to
4 those plants to confirm that the process was consistent with
5 the description in the EPA declaration, did you have the EPA
6 application in front of you?

7 A. No.

8 Q. Did you have any documents in front of you when you made
9 that statement in your deposition?

10 A. No.

11 Q. Mr. Shen, I'd like you to turn -- if you could look at
12 DX-9, I'm sorry, Plaintiff's Exhibit 9, as well as to
13 Defendant's Exhibit 17, both of which you've seen today.

14 When you testified in your deposition that you went
15 to Guosheng and to Tai He to confirm that the manufacturing
16 process was consistent with the description in the EPA
17 application, were you referring to either one of these
18 documents?

19 A. Yes. DX -- DTX-17 document.

20 Q. And that's the stamped process document on Yangeheng Tai
21 He letterhead?

22 A. Yes.

23 Q. And Mr. Shen, if you could turn to the third page in this
24 document.

25 THE COURT: Seventeen?

1 BY MR. DAVIS:

2 Q. Excuse me, I'm sorry, I'm sorry, yeah, PX-17.

3 I'm sorry, I got that screwed up, DX-17 -- can I say
4 that word in court -- Willowood 000019 and Willowood -- sorry,
5 WW000020, who is identified in this document as carrying out
6 the etherification step?

7 A. Guosheng Chemical.

8 Q. That's Guosheng?

9 A. Yes.

10 Q. Mr. Shen, did you ever instruct Mr. Wu, or anyone at Tai
11 He, how to manufacture azoxystrobin?

12 A. No.

13 Q. Did you ever instruct Mr. Wu, or anyone else at Tai He, to
14 purchase intermediates from third parties for the manufacture
15 of azoxystrobin?

16 A. No.

17 Q. Why not?

18 A. May I help it because -- may I help?

19 THE COURT: Yes.

20 THE INTERPRETER: Because Tai He then had already
21 customers. They been in production for azoxystrobin for many
22 years. Their technology is a mature one. They had their
23 supplier for the intermediates and there were not -- would not
24 be possible for them to make any changes.

25 BY MR. DAVIS:

1 Q. Mr. Shen, please turn in your binder to the tab marked
2 PTX-44. It's toward the back. Now, if you would, please turn
3 to the e-mail that starts at the bottom of the second page.

4 MR. DAVIS: We're on a different exhibit now. You
5 can pull that down. Go to PTX-44 and to the e-mail at the
6 bottom of the second page.

7 BY MR. DAVIS:

8 Q. Mr. Shen, do you see the e-mail I'm referring to that --
9 from Rajesh to Brian Heinze and a copy to Ann Tillman, Vijay
10 and you dated May 27, 2013? Do you see that?

11 A. Yes.

12 Q. Rajesh writes to Brian in this e-mail, quote, it seems all
13 the manufacturers in China for this product are using the same
14 process and steps for the etherification/condensation. These
15 step has to be used in sequence and is very difficult to avoid.

16 Do you see that?

17 A. Yes.

18 Q. Did you ever ask Mr. Wu, or anyone else at Tai He, whether
19 there was a different way to make azoxystrobin?

20 A. Yes.

21 Q. And when was that?

22 A. Shortly after this e-mail.

23 Q. What did you learn from those discussions?

24 A. May I ask help?

25 THE COURT: Yes.

1 THE INTERPRETER: I went to communicated with them
2 and -- for the possibility of changing the steps. They replied
3 that there are several problems. It is possible, but there are
4 several problems. No. 1 being the -- adapting to new steps,
5 they would have to obtain the permit. And for the
6 intermediate, if they adopt to do this process, they have no
7 capability for the treatment of waste water and waste fumes,
8 and for that reason they, even though it's possible, they do
9 not want to change.

10 BY MR. DAVIS:

11 Q. Mr. Shen, I'd like to refer you back to the first sentence
12 of the e-mail from Rajesh to Brian in which it says, "All the
13 manufacturers in China for this product are using the same
14 process and steps for etherification/condensation. These step
15 has to be used in sequence and is very difficult to avoid." Do
16 you see that sentence?

17 A. Yes.

18 Q. Do you understand that sentence to mean that the same
19 company has to perform both the etherification and the
20 condensation step?

21 MS. BALTZER: Objection, leading, Your Honor.

22 THE COURT: Overruled. You may answer.

23 THE WITNESS: As I know, since two step is a separate
24 step, it can be performed by different manufacturer.

25 BY MR. DAVIS:

1 Q. And what's your understanding concerning the manufacturer
2 steps for Tai He for azoxystrobin as to whether these steps are
3 conducted by separate parties, companies?

4 THE INTERPRETER: They use separate steps.

5 BY MR. DAVIS:

6 Q. And is that -- is there a document that you received from
7 Tai He that confirms that those are performed by separate
8 companies?

9 A. Yes.

10 Q. And which document is that?

11 A. DTX-17.

12 THE INTERPRETER: It is specified in DTX-17.

13 Q. And that's the Yancheng Tai He Chemical Company
14 manufacturing process on company letterhead with the stamp,
15 right?

16 A. Yes.

17 Q. At some point in 2014, did you visit the Tai He plant to
18 confirm that the process being used to manufacture azoxystrobin
19 was consistent with the document at DX-17?

20 A. Yes.

21 Q. Okay. Where did you go for this visit?

22 A. Guanda.

23 Q. What is Guanda?

24 A. Guanda is a production facility of Tai He for
25 azoxystrobin.

1 Q. And when did you make this visit to Guanda?

2 A. 2014, before we first purchase from Tai He.

3 THE COURT: Before what?

4 THE WITNESS: Before our first purchase of
5 azoxystrobin from Tai He.

6 THE COURT: Oh, before you first purchased
7 azoxystrobin. I'm sorry. I apologize.

8 THE WITNESS: Sorry.

9 BY MR. DAVIS:

10 Q. And why did you make this visit in 2014 before you first
11 purchased product from Tai He -- azoxystrobin from Tai He?

12 A. It is necessary for us, because for each product, we get
13 registration, and before we first purchase, we will do the
14 audits for the manufacturer.

15 THE COURT: Audit?

16 THE WITNESS: Audit, yes.

17 THE COURT: For the manufacturer?

18 THE WITNESS: Yes.

19 THE COURT: All right. Thank you.

20 BY MR. DAVIS:

21 Q. How did you confirm that the azoxystrobin Willowood
22 Limited was going to purchase from Tai He was made consistent
23 with the stamped manufacturing process during your audit visit?

24 A. May I ask help?

25 THE COURT: Yes.

1 THE INTERPRETER: At that time, I brought document
2 No. 17 that we have here and to the company. I was with the
3 production manager on the production line, and I observed them
4 pouring the materials -- the raw materials into the reactor.
5 That include the raw material intermediates. And I also
6 observed the equipment, everything conformed to what's
7 described in the document.

8 BY MR. DAVIS:

9 Q. Did Mr. Wu accompany you through your entire visit at Tai
10 He Guanda?

11 A. Yes.

12 Q. Did you visit any other plants during your audit visits in
13 2014?

14 A. Yes.

15 Q. What other plants did you visit for your audit visit for
16 2014 for azoxystrobin manufacturing process?

17 A. I visited all the factory to the manufacture of
18 azoxystrobin in the document, including Yongkai, Gousheng, and
19 Jinyang.

20 Q. Yongkai, Gousheng, and Jinyang?

21 A. Yes.

22 Q. And did you watch the production process of the
23 intermediates when you visited each of those plants?

24 A. Yes.

25 Q. And were you able to confirm that the production process

1 that took place at each of those plants was consistent with the
2 manufacturing steps described in the stamped process document
3 at DTX-17?

4 A. Yes.

5 Q. Mr. Shen, if you visited the plants before Willowood
6 Limited had actually purchased azoxystrobin from Tai He, how is
7 it that you were able to observe the manufacture of
8 azoxystrobin and the intermediates at Tai He and the other
9 plants?

10 A. Yes.

11 THE INTERPRETER: I was able to observe the
12 production on the production line because Tai He then -- had
13 already had many customers, and they had been producing
14 azoxystrobin for many years, therefore, I was able to.

15 BY MR. DAVIS:

16 Q. During your site visits for the audit in 2014 for the
17 manufacture of azoxystrobin, did you tell anyone at Tai He or
18 Guosheng how to manufacture azoxystrobin or any intermediates?

19 A. No.

20 Q. During this site visit in 2014, did you tell anyone at Tai
21 He that any of the intermediates used in the condensation step
22 had to be acquired from third parties?

23 A. No.

24 Q. Have you ever heard a chemical known as DABCO?

25 A. Yes.

1 Q. What is your understanding of DABCO?

2 A. As I know, it is a catalyst.

3 Q. And can you tell the jury briefly what a catalyst is, your
4 understanding of a catalyst?

5 A. Catalyst is helping for the reaction. To get more --

6 THE INTERPRETER: Catalyst is used in production to
7 help with increasing the productivity.

8 BY MR. DAVIS:

9 Q. Mr. Shen, what observations did you make during your audit
10 visit in 2014, concerning the use of catalysts in the
11 condensation reaction that was carried out by Tai He?

12 THE INTERPRETER: As I said before, I observed the
13 production in their pouring material into the reactor. All raw
14 material including intermediates, they did not use catalyst.

15 BY MR. DAVIS:

16 Q. And "they," you're referring to Tai He, correct?

17 A. Yes.

18 Q. And this was during your observation of condensation?

19 A. Condensation step.

20 Q. During your audit visits in 2014, did you develop an
21 understanding of the relationship between Guosheng and Tai He?

22 A. Yes.

23 Q. And what was your understanding of that relationship?

24 A. Guosheng and Tai He, they are independent company. And
25 Tai He buy the intermediate for condensation from Guosheng.

1 Q. Do you have an understanding as to how long that
2 relationship -- how long Tai He has been acquiring
3 intermediates from Guosheng?

4 A. Mr. Wu told me several years, but I don't know exactly.

5 Q. I'd like you to turn to the tab in your binder marked by
6 DTX-13. And you'll see my name at the top of that document.
7 But I'd like you to look to the bottom of the first page.
8 You'll see e-mail from Sophia dated Wednesday, April 1, 2015,
9 to Brian, to you, and to Vijay. Do you see that e-mail?

10 A. Yes.

11 Q. Okay. And you'll see that she writes: Tai He manufacture
12 below steps: Cyclization, methylene -- then turning to the
13 next page -- etherification, and condensation. Do you see
14 that?

15 A. Yes.

16 Q. Based on your 2014 audit visit to the plant, do you
17 believe that that information provided by Sophia in that e-mail
18 is correct?

19 A. No.

20 Q. And how do you know that it's not correct?

21 A. Because I just mentioned, when I go to audit Tai He, I
22 believe the document is No. 17. And the application process is
23 consistent with No. 17, so this No. 17 should be incorrect.

24 Q. And did you respond to this e-mail that Sophia wrote?

25 A. No.

1 Q. Why not?

2 A. I don't remember. Maybe I even have -- did not pay
3 attention for this e-mail.

4 Q. Mr. Shen, at some point after this e-mail, were you asked
5 to go again to Tai He to confirm that the stamped process
6 document at DTX-17 was accurate?

7 A. Yes.

8 Q. Can you describe the circumstances of that visit?

9 A. The second time, I go with both Mr. Vijay together to the
10 factory.

11 THE COURT: With Mr. Vijay?

12 THE WITNESS: Yes.

13 THE COURT: Uh-huh.

14 THE WITNESS: We go together and went to the jobs
15 again like the first time.

16 BY MR. DAVIS:

17 Q. Okay. And can you describe that second visit? What did
18 you do during that second visit at Tai He?

19 A. We go to the manufacturer and checking the -- come from
20 the manufacturing process we saw at Tai He and Guosheng and as
21 a tour again, and all they are in consistence with
22 manufacturing process in No. 17 document.

23 THE COURT: They are consistent or inconsistent?

24 THE WITNESS: They are consistent.

25 THE COURT: Consistent.

1 BY MR. DAVIS:

2 Q. Did you actually watch the condensation step being carried
3 out by Tai He during the second visit?

4 A. Yes. We go to the production line again.

5 Q. Okay. And you watched the process being carried out on
6 the production line?

7 A. Yes.

8 Q. And when was that, approximately, if you recall?

9 A. Pardon?

10 Q. Do you remember when that second visit was that you've
11 just referred to, to Tai He?

12 A. Condensation.

13 Q. What year? Date?

14 A. 2017.

15 Q. Okay. It was after this e-mail that we just referred to
16 as DTX-13?

17 A. Yes.

18 Q. Now, Mr. Shen, Mr. Wu -- let me back up.

19 Did you visit any other plants during the second
20 visit, the one that occurred in 2015?

21 A. Yes. Including Guosheng and Jinyang and Yongkai.

22 Q. Okay. And what did you confirm, if anything, when you
23 visited Guosheng?

24 A. We confirmed with the process, which I watch as -- go
25 through the production line again of the three factory again

1 and confirm with them.

2 THE COURT: And confirm what?

3 THE WITNESS: The manufacturing process.

4 THE COURT: It wasn't you. Mr. Davis started
5 speaking.

6 MR. DAVIS: It was my fault. I'm sorry.

7 BY MR. DAVIS:

8 Q. What step were you -- did you confirm was performed by
9 Guosheng?

10 A. They carried a two-step assemblies on this document,
11 including etherification.

12 Q. And what's the other step that was carried out at
13 Guosheng?

14 A. It is chlorination.

15 Q. Mr. Shen, Mr. Wu testified in his deposition, which was
16 read today, that you made two visits to his plant to watch the
17 manufacturing process for azoxystrobin. But he also testified
18 that both of your visits were in 2014. How do you respond to
19 that?

20 THE COURT: Well, ask a different question.

21 BY MR. DAVIS:

22 Q. Is that true, that you made two visits in 2014?

23 A. No. I did visit Tai He two times, once in 2014 before we
24 first purchase from Tai He.

25 THE COURT: Before what?

1 THE WITNESS: First purchased.

2 THE COURT: First purchased. Okay.

3 THE WITNESS: And the second time -- and that is for
4 the audits for the factory. And the second time is Mr. Brian
5 Vijay asked me go there again to check. That is in 2015.

6 BY MR. DAVIS:

7 Q. Mr. Brian and Vijay asked you to go and check again in
8 2015?

9 A. Yes. But possible, because in that area, there's a lot
10 of -- a lot of pesticide plant. Maybe I visited some as
11 factory at same time as I stop there one time, possible.

12 Q. So you think -- so if I understand you correctly, you --
13 there's a lot of plants in that manufacturing area that you
14 visit?

15 A. Yes.

16 Q. And you might have, during a visit to one of those other
17 plants, stopped by to see Mr. Wu?

18 A. Yes.

19 Q. Which would -- would that have been a different visit than
20 the audit -- 2014 audit visit and the 2015 visit that was
21 requested by Vijay and Brian?

22 A. Yes. Yes.

23 Q. During your second visit to Tai He, the one that occurred
24 in 2015, did you observe the use of any catalyst in the
25 production in the condensation step?

1 A. No.

2 Q. During this second visit to Tai He in 2015, did you have
3 any discussions with Tai He about the use of DABCO in the
4 condensation step?

5 A. Yes, I talked with them.

6 Q. And what did you learn as a result of those conversations?

7 A. Mr. Wu confirmed they never use DABCO, and at that time,
8 they even don't know this is the chemical name.

9 Q. Mr. Wu didn't know --

10 A. He didn't know.

11 THE COURT: Did not know?

12 THE WITNESS: Yes. Did not know.

13 BY MR. DAVIS:

14 Q. Do you believe that Mr. Heinze, Mr. King, Mr. Middione, or
15 Mr. Mundhra ever instructed Tai He on how to conduct the
16 manufacturing of azoxystrobin that it sells to Willowood
17 Limited?

18 A. No.

19 Q. How do you know that?

20 A. Because Brian, Vijay, and Joe, Andy, they don't speak
21 Chinese, and people from Tai He, including Mr. Wu, they cannot
22 speak English. So most -- all the things is communicate by me
23 between both sides.

24 Q. At any time, did you instruct Tai He how to manufacture
25 azoxystrobin?

1 A. No.

2 Q. And, at any time, did you instruct Tai He to acquire the
3 etherification intermediate from Guosheng or anyone else?

4 A. No.

5 Q. Are you aware of anyone else at Willowood instructing Tai
6 He how to manufacture azoxystrobin?

7 A. No.

8 THE COURT: Just for planning, are you almost done?

9 MR. DAVIS: I am almost done.

10 THE COURT: All right.

11 MR. DAVIS: In fact, I may be done, done. Let me
12 just check with my colleagues. I have one other thing.

13 BY MR. DAVIS:

14 Q. You mentioned, if I heard you correctly, that you met with
15 the production manager at Tai He during at least one of your
16 visits to Tai He. Did I understand you correctly?

17 A. Yes.

18 Q. What is his name?

19 A. All I remember Mr. Chen.

20 Q. Chen?

21 A. Yes, C-H-E-N.

22 Q. And did you discuss the manufacturing process for
23 condensation step with Mr. Chen during your audit visit and
24 your confirmatory visit in 2015?

25 A. Yes. I come from the -- to discuss it with him and

1 confirm that they only perform the condensation step and they
2 buy the intermediate at the factory.

3 Q And did Mr. Chen accompany you on the visit to the
4 production line when you watched the intermediates and other
5 reagents go into the production -- into the reaction mix?

6 A. Yes. We together.

7 MR. DAVIS: Together. Okay. No more questions, Your
8 Honor.

9 THE COURT: I assume you have more than five minutes.

10 MS. BALTZER: Yes, Your Honor.

11 THE COURT: We'll go to lunch then.

12 Ladies and gentlemen, let me excuse you for the lunch
13 break. Please don't talk about the case among yourselves or
14 with anyone else, no independent investigation. Avoid contact
15 with the lawyers, parties or witnesses. Keep an open mind and
16 come back about ten minutes till 2:00.

17 All right. And if I can ask the interpreter just to
18 move on back there so that the jury can get by because they'll
19 walk right where you're standing.

20 The jury is excused until ten minutes till 2:00.

21 (The jury left the courtroom at 12:35 p.m.)

22 THE COURT: All right. Thank you.

23 Anything we need to talk about before we go to lunch?
24 No. We'll be in recess until 1:50.

25 (At 12:38 p.m., break taken.)

1 (At 1:50 p.m., break concluded.)

2 THE COURT: Anything before the jury comes in?

3 MR. TILLER: A couple issues, Your Honor.

4 THE COURT: Yes.

5 MR. TILLER: A couple I'll handle and then I know
6 Mr. Neuman has one.

7 First of all, we're going to be filing -- it's
8 nothing that the Court has to address, but we're going to be
9 filing a notice today just to put on notice our objection to
10 Your Honor's ruling with regard to DX-192 --

11 THE COURT: I'm sorry. I can't hear you.

12 MR. TILLER: I'm sorry. We're going to be filing a
13 notice this afternoon noting for the record our objection to
14 Your Honor's ruling with regard to DX-192 to 252. It's just
15 making sure that all the exhibits will be on the record.

16 THE COURT: Well, yeah. I mean, if you want to offer
17 them on the record, I'll --

18 MR. TILLER: We're just going to do it that way.
19 That way we're not taking up any of your time.

THE COURT: Okay.

21 MR. TILLER: The second issue I have to admit is
22 something I don't know that I've ever said in a trial, which is
23 today is going much, much faster than I was expecting.

24 THE COURT: Well, we haven't hit cross-examination
25 yet.

1 MR. TILLER: Well, we haven't yet and obviously --
2 but I just wanted to make Your Honor aware after Mr. Shaojun we
3 have Dr. Lipton ready to go and then we do have one more
4 witness, our damages witness, but he's not -- I mean, we
5 haven't exchanged -- we don't have witness binders. We haven't
6 exchanged demonstratives yet. He'll be our last witness.

7 THE COURT: Okay. Good. Well, that's fine. I don't
8 expect that to -- you've got -- we have cross of this witness
9 and then you have Dr. Lipton.

10 MR. TILLER: Correct. Just letting you know today is
11 going a little faster than expected.

12 THE COURT: Well, that's good.

13 MR. TILLER: I know Mr. Neuman needs to raise
14 something.

15 THE COURT: Yes.

16 MR. NEUMAN: Thank you, Your Honor. One issue. I'd
17 just like to read into the record the correlation between the
18 deposition exhibit numbers that were identified in
19 Mr. Reichman's deposition correlated to the trial exhibit
20 numbers.

21 THE COURT: Okay.

22 MR. NEUMAN: This is with respect to Mr. Reichman's
23 deposition. Deposition Exhibit 3 is DTX-118. Deposition
24 Exhibit 4 is DTX-119. Deposition Exhibit 6 is DTX-121.
25 Deposition Exhibit 7 is DTX-122.

1 THE COURT: Okay. Thank you.

2 | Anything else? No.

3 You can bring the jury in.

4 (The jury panel is present.)

5 THE COURT: I believe we had finished with direct
6 examination, so the witness is with Syngenta.

7 MS. BALTZER: Your Honor, we have witness binders
8 prepared. May I approach?

9 THE COURT: Okay.

10 (Binders handed to the witness.)

11 THE COURT: Go ahead.

12 | CROSS-EXAMINATION

13 | BY MS. BALTZER:

14 Q. Mr. Shaojun, I would like you to turn in your binder to
15 what's been marked as PX-31. On the bottom of this page, the
16 first page of this e-mail, there's an e-mail sent from you to
17 Vijay Mundhra, CC-ing Brian Heinze, correct?

18 A. Yes.

19 Q. And this e-mail is sent on Friday, May 30, 2014, correct?

20 A. Yes.

21 Q. And Friday, May 30, 2014, was before Syngenta filed this
22 lawsuit on March 27, 2015, correct?

23 A. Pardon?

24 | (Interpreter repeating question.)

25 A. Well, to be frankly, I don't know what time Syngenta

1 started the case.

2 Q. Mr. Shaojun, I'll represent to you that Syngenta filed
3 this lawsuit on March 27, 2015. This e-mail is dated on
4 May 30, 2014, which is before March 27th, 2015, correct?

5 A. Okay.

6 THE COURT: Okay. You don't really even need to ask
7 the witness that -- I mean, go ahead.

8 BY MS. BALTZER:

9 Q. In this e-mail dated before Syngenta filed the lawsuit in
10 March 2015, you stated: For azoxystrobin, they really divided
11 different steps into four factories as the manufacturing
12 process we submitted. Correct?

13 A. Yes.

14 Q. And below that you list three steps of the azoxystrobin
15 manufacturing process, correct?

16 A. Yes.

17 Q. And those three steps are hydrolysis, chlorination, and
18 dehydration, correct?

19 A. Yes.

20 Q. And you list the three factories that perform each of
21 those steps, correct?

22 THE WITNESS: May I ask help?

23 THE COURT: Yes.

24 (Interpreter repeating question.)

25 A. Yes.

1 Q. And the three steps you list here, none of those three
2 steps are etherification or condensation, correct?

3 A. Yes.

4 Q. And continuing in this e-mail that you wrote on May 30th,
5 2014, before Syngenta filed this lawsuit --

6 THE COURT: Okay. You can argue the case to the jury
7 later. If you would please ask shorter questions.

8 BY MS. BALTZER:

9 Q. You say, continuing in this e-mail: But for last two
10 steps for their own plants, they are just synthesizing in their
11 neighbor plant. Correct?

12 A. Yes.

13 Q. Mr. Shaojun, I would like you to turn to DX-13 in your
14 binder.

15 A. Yes.

16 Q. I would like you to turn to the second page of that e-mail
17 chain. We see toward the bottom there's an e-mail that Brian
18 Heinze sent to Sophia, you, and Vijay Mundhra, correct?

19 A. Yes.

20 Q. And Brian Heinze sent this on April 2nd, 2015, correct?

21 A. Yes.

22 Q. In this e-mail, Brian Heinze says: Sophia, where does
23 Zenith play a role here? Correct?

24 A. Yes.

25 Q. And Zenith is Tai He, correct?

1 A. No. Zenith is another company owned by Mr. Wu. It's not
2 the same. It's not the same both sides.

3 Q. In Willowood, Willowood refers to -- commonly refers to
4 Tai He as Zenith, correct?

5 A. Yes.

6 Q. Looking up at the e-mail that Sophia sent right after
7 that, at the bottom of the page before that --

8 A. Yes.

9 Q. -- Sophia e-mails Brian Heinze, you, and Vijay Mundhra,
10 correct?

11 A. Yes.

12 Q. And this e-mail is sent on April 1st, 2015, correct?

13 A. Yes.

14 Q. And in this e-mail, Sophia responds to Brian Heinze's
15 question and says: Tai He manufacture below steps. Correct?

16 A. Yes.

17 Q. And Sophia lists below that the steps of cyclization,
18 methylene, etherification, and condensation to yield
19 azoxystrobin, correct?

20 A. Yes.

21 Q. In the next e-mail on the first page, Brian Heinze e-mails
22 Christopher Hayden, correct?

23 A. Yes.

24 Q. This was sent on April 2nd, 2015?

25 A. Yes.

1 Q. And in this e-mail, he says: Chris, I think this is the
2 missing piece you've been looking for. Please let me know your
3 thoughts. Correct?

4 A. Yes.

5 Q. I would like you to look at the e-mail above that now on
6 the top of the page. This is an e-mail from Chris Hayden to
7 Brian Heinze and Peter Davis, who was asking you some questions
8 a little earlier, correct?

9 A. Yes.

10 Q. And this e-mail was sent on April 2nd, 2015, correct?

11 A. Yes.

12 Q. And in this e-mail, Chris Hayden says: Brian, we need to
13 conference call. Correct?

14 A. Yes.

15 Q. And this was in response to Sophia listing that Tai He
16 performs the etherification and condensation steps, correct?

17 (Interpreter repeating question.)

18 A. I don't know what is they talking about for the call.

19 Q. Chris Hayden says "We need to conference call" in the same
20 e-mail chain in which Sophia says that Tai He does the
21 etherification and condensation steps, correct?

22 A. I don't know -- for this conference call, I don't know
23 what it is talking about.

24 Q. Mr. Shaojun, I would like you to turn to the other binder
25 that you have in front of you that Mr. Davis handed you

1 earlier. I would like you to turn to what's been marked as
2 DTX-64.

3 A. Can you talk a little slower because my --

4 Q. It's DTX-64.

5 THE COURT: I think he's asking you to speak more
6 slowly.

7 MS. BALTZER: I'll try, Your Honor.

8 THE WITNESS: Yes.

9 BY MS. BALTZER:

10 Q. You discussed this e-mail or this document a little
11 earlier with Mr. Davis, right?

12 A. Yes.

13 Q. And this document contains a translation of Tai He's
14 manufacturing process that you testified was the original
15 translation given by Tai He, correct?

16 A. Yes.

17 Q. And this translation doesn't list who performs the
18 etherification or condensation steps, correct?

19 A. Yes.

20 Q. And I would like you to turn to the very first page of
21 this document.

22 MS. BALTZER: If we zoom in, David, on the top of
23 this e-mail chain.

24 BY MS. BALTZER:

25 Q. This was attached to an e-mail from Sophia sent to Vijay

1 Mundhra and you, correct?

2 A. Yes.

3 Q. And this e-mail is dated April 6, 2015, correct?

4 A. Yes.

5 Q. And this translation was attached to this e-mail on April
6, 2015?

7 A. Yes.

8 Q. You testified a little earlier. You said that Guosheng --
9 you saw Guosheng performing the etherification step --

10 THE COURT: I'm sorry. I actually needed you to slow
11 down on that one. Could you say it again?

12 MS. BALTZER: Sorry.

13 BY MS. BALTZER:

14 Q. You testified earlier that you saw Guosheng perform the
15 etherification step of the azoxystrobin process?

16 A. Yes.

17 Q. And you also testified that you saw Guangda perform the
18 condensation step of the process, correct?

19 A. Yes.

20 Q. Guosheng and Guangda, they are approximately 100 to
21 200 meters from each other, correct?

22 A. I don't know, but they are very near.

23 Q. They are very near each other?

24 A. Yes.

25 Q. Did you walk from Guosheng to Guangda when you visited

1 them?

2 A. Yeah, we can walk there.

3 Q. How long did it take you to walk between the two?

4 (Interpreter repeating question.)

5 A. Guanda is -- I don't know exact number, but along the 10
6 to 15 minutes.

7 Q. When you visited these factories, did you see how the end
8 product of the etherification step is transferred to -- from
9 Guosheng to Guangda?

10 (Interpreter repeating question.)

11 A. No. For that, I don't -- I have not seen transfer.

12 Q. You never saw the end product of the etherification step
13 transferred --

14 A. Yes, yes.

15 Q. You -- sorry. I just want to make sure we're clear. You
16 never saw the end product of the etherification step
17 transferred from Guosheng to Guangda, did you?

18 A. Yes, because I didn't saw the transfer.

19 Q. Sorry. Could you say that again?

20 A. (By Interpreter) When I did the site visit, I did not see
21 the transfer of the final products from one company to the
22 other.

23 Q. And, Mr. Shaojun, when you were at Guosheng, how long were
24 you there?

25 A. I don't remember exactly, but a few hours there.

1 Q. Just a few hours, is that correct?

2 A. Yes. I stayed there half afternoon and a few of us there.

3 Q. And at Guangda? How long were you at Guangda when you
4 visited?

5 A. Guangda is almost a afternoon.

6 Q. So you were there about approximately an afternoon's worth
7 of time, correct?

8 A. Yes, about.

9 MS. BALTZER: No further questions, Your Honor.

10 THE COURT: Redirect?

11 REDIRECT EXAMINATION

12 BY MR. DAVIS:

13 Q. Mr. Shaojun, I would like to take you to DX-13, which is
14 in the white binder that counsel for Syngenta provided you.

15 A. Thirteen?

16 Q. DX-13.

17 A. Yes.

18 Q. And you -- you testified earlier that you believed that
19 this e-mail from Sophia is incorrect, is that right?

20 A. Yes.

21 Q. And why do you believe that that's incorrect?

22 A. Because I have been there for -- 2014 for audit and I
23 bring the documents over there for the -- Document No. 17.
24 Under all the manufacturing process, I have been -- confirmed
25 with the manufacturers and it was inconsistent with the

1 manufacturing process, so this is not same so is not correct.

2 Q. So the e-mail from Sophia on April 1, 2015, is
3 inconsistent with the manufacturing document at DX-17, correct?

4 A. Yes.

5 Q. Did you go to Tai He again after the e-mail of April 1,
6 2015, at the request of Vijay and Brian to again reconfirm the
7 manufacturing steps?

8 A. Yes.

9 Q. What was your conclusion as a result of that visit?

10 A. The same.

11 Q. Could you state it again, please, that -- was the --
12 withdrawn.

13 MR. DAVIS: No further questions, Your Honor.

14 THE COURT: Anything else?

15 MS. BALTZER: No further questions, Your Honor.

16 THE COURT: Okay. Thank you. You may step down.

17 Just leave the notebooks there.

18 (The witness left the stand.)

19 THE COURT: You can call your next witness.

20 MR. TILLER: Call Dr. Mark Lipton.

21 DR. MARK LIPTON

22 DEFENDANT'S WITNESS, SWORN AT 2:07 P.M.

23 DIRECT EXAMINATION

24 BY MR. TILLER:

25 THE WITNESS: Your Honor, could I get a glass of

1 water?

2 THE COURT: Yes.

3 You may hand him some water, Mr. Tiller.

4 (Mr. Tiller complied with the request.)

5 Q. Sir, could you please state your name?

6 A. My name is Mark Lipton.

7 Q. Could you please go over your educational background,
8 please?

9 THE COURT: Just a second. Can you adjust the mic
10 and either stand in front of the mic or --

11 MR. TILLER: Yes.

12 THE COURT: I think he asked you about your
13 educational background.

14 A. I received my bachelor's degree in chemistry from Harvey
15 Mudd College in 1981. I then received my Ph.D. degree, along
16 with two master's degrees, from Columbia University in the city
17 of New York in 1988, also in chemistry.

18 Q. And what was your Ph.D. thesis?

19 A. My Ph.D. thesis was a two-part thesis. The first part was
20 on the development of software that would compute the
21 three-dimensional structure of organic molecules, which was
22 important for the purposes of predicting chemical properties
23 and reactivity.

24 The second part of my thesis was concerning the
25 synthesis of a variety of derivatives of the antibiotic

1 Vancomycin. Vancomycin is an antibiotic used in the treatment
2 of drug-resistant bacterial infections and I made about 30
3 different derivatives of Vancomycin and tested them.

4 Q. Did you do any post-doctoral research after getting your
5 Ph.D.?

6 A. Yes, I did. I did my post-doctoral research at the
7 University of California, Berkeley. There I worked on the
8 computer-aided design and synthesis of a series of enzyme
9 inhibitors.

10 THE COURT: Enzymes inhibitors?

11 THE WITNESS: Yes.

12 THE COURT: Okay.

13 BY MR. TILLER:

14 Q. Do you have any experience in the agrichemical industry?

15 A. Yes. Between 1981 and 1983, I was employed by Shell
16 Development Company in Modesto, California, and there I worked
17 as a computational chemist studying the behavior of pesticides,
18 insecticides, herbicides, and fungicides.

19 Q. And what specifically did you do while at Shell?

20 A. I had two different projects while at Shell. The first
21 was to develop methods for studying soil diffusion of
22 pesticides; and this is important in order for farmers to be
23 able to properly apply pesticides to their fields to avoid
24 runoff and contamination, but also to get complete coverage.

25 And then in a second part of my research, I looked at

1 the possible mechanisms for the degradation of a promising
2 insecticide candidate, which turned out to be unstable in
3 light, and so I developed an understanding of why it was
4 unstable to light.

5 Q. Now, after your post-doctoral research at Cal Berkeley,
6 where were you next employed?

7 A. After my post-doc, I took a position at Purdue University
8 in the Department of Chemistry and that was in 1990 and there I
9 remain today.

10 Q. Are you a professor at Purdue?

11 A. I am.

12 Q. As a professor at Purdue, what do you do?

13 A. I, first of all, teach organic chemistry both at the
14 undergraduate and graduate level. I also run a research group
15 that conducts research in organic synthesis.

16 Q. Have you had any Ph.D. candidates come out of your lab
17 while at Purdue?

18 A. While I've been at Purdue, I have had 23 students receive
19 a Ph.D degree under my guidance, as well as 14 master's
20 candidates have also received a degree under my guidance.

21 Q. Do you have undergraduates work in your lab?

22 A. I have had roughly between 20 to 25 undergraduates working
23 in my lab over the years.

24 Q. And what has been the research focus in your lab while at
25 Purdue?

1 A. In the beginning of my career, I was concerned with
2 developing a new catalyst for an organic transformation, as
3 well as studying the behavior of some industrially used
4 catalysts. For the last 20 years, I've been primarily focused
5 on the synthesis and evaluation of biologically active
6 molecules.

7 Q. Are those organic molecules?

8 A. These are all organic molecules.

9 Q. So just how many years did your research focus on
10 catalytic reactions?

11 A. About seven years.

12 Q. And since then your research has focused on the synthesis
13 of certain organic molecules?

14 A. Yes.

15 Q. Okay. Have you published any papers?

16 A. I've published around 50 peer-reviewed papers, almost all
17 in the area of organic synthesis.

18 Q. Can you name some of the journals?

19 A. Yes. I've published them in journals such as the Journal
20 of the American Chemical Society, the Journal of Organic
21 Chemistry, Organic Letters and by Organic and Medicinal
22 Chemistry letters, just to name a few.

23 Q. What does it mean for a journal -- what does it mean for a
24 paper to be peer reviewed?

25 A. Peer review means that before your paper appears in print

1 it is -- it undergoes a thorough scientific review by two or
2 more fellow scientists usually conversant in your area; and
3 they will review your paper for both scientific errors, as well
4 as typographical errors; and you then submit your paper -- a
5 revised version of your paper for publication.

6 Q. Have you ever served as a peer reviewer for any journals?

7 A. Yes, I have. I would estimate somewhere upwards of a
8 hundred times I have reviewed other papers for publication.

9 Q. How are you selected as a peer reviewer?

10 A. That choice is up to the editor of the journal, who will
11 typically try to find experts in the field that the paper is
12 concerned with.

13 Q. Have you ever given any lectures on organic molecules and
14 their synthesis?

15 A. Yes. I've given about 70 lectures worldwide on my
16 research.

17 Q. Can you name some of the places where you've given these
18 lectures?

19 A. Some of the institutions where I delivered lectures:
20 Cambridge university; Imperial College London; the university
21 of Kyoto in Japan; University of California, Irvine; the
22 Scripps Research Institute, to name a few.

23 Q. Have you ever given any lectures to any corporate
24 entities?

25 A. Yes. I've delivered lectures to a number of different

1 companies, mostly pharmaceutical companies, as well as Dow
2 AgroSciences.

3 Q. And what is Dow AgroSciences?

4 A. Dow AgroSciences is the agrichemical arm of Dow, which I
5 haven't followed current news, but I think it's still in
6 existence.

7 Q. Have you ever been retained as a consultant by any
8 corporate entities?

9 A. Yes. I have served as a consultant for a number of
10 different companies: Eli Lilly and Company, Merck, Upjohn, as
11 well as Dow AgroSciences.

12 Q. Without divulging too many specifics, because I'm sure
13 there are issues with that, generally speaking, what has your
14 consultation with these companies been involved in?

15 A. My consultation has usually been with the process
16 development groups at these corporations where I'm brought in
17 specifically to offer insight into particular chemical
18 reactions that are of concern to them.

19 Q. What was -- generally speaking, at a high level, what was
20 the consultation you did with Dow AgroSciences?

21 A. As best as I remember it, it was a particular reaction in
22 the synthesis of an insecticide that they were working on.

23 Q. Have you ever applied for and been granted a grant?

24 A. Yes, I have. I have had, throughout my career, probably
25 15 to 20 different research grants.

1 Q. And, generally speaking, what were these grants related
2 to?

3 A. They were related to my research in the area of organic
4 synthesis.

5 Q. Okay. So all of your research has been in the area of
6 organic synthesis?

7 A. Virtually all of it.

8 Q. Okay. Can you just identify some of the granting
9 entities?

10 A. Yes. I have received grants from the National Institutes
11 of Health, from the National Science Foundation and the
12 Petroleum Research Fund.

13 Q. Have you served as a reviewer on grant applications
14 submitted by others?

15 A. Yes. I have to date served on four different NIH study
16 sections, as well as twice serving as a reviewer for NSF
17 proposals.

18 MR. TILLER: Your Honor, I would move to have
19 Dr. Lipton qualified as an expert in the synthesis of organic
20 molecules.

21 THE COURT: And your hand was in front of your mouth.

22 MR. TILLER: I'm sorry. I would move to qualify Dr.
23 Lipton as an expert in the synthesis of organic molecules.

24 THE COURT: Any questions about his qualifications?

25 MR. SANTHANAM: We do object, Your Honor, but we'll

1 cover it in cross-examination.

2 THE COURT: All right. Go ahead. He may so testify.

3 BY MR. TILLER:

4 Q. Dr. Lipton, are you familiar with what's been called the
5 '761 patent?

6 A. Yes, I am.

7 Q. Can you generally explain -- Ms. Sanders, could we get the
8 screen. Thank you.

9 Could you generally explain your understanding of the
10 '761 patent.

11 A. The '761 patent concerns the synthesis of azoxystrobin and
12 specifically concerns the use of DABCO as a catalyst in the
13 so-called condensation step.

14 Q. Can we take a look at, for example, Claim 1 of the '761
15 patent, and maybe you can explain briefly what is set forth in
16 Claim 1.

17 THE COURT: We're looking at the patent on the
18 screen, I take it?

19 MR. TILLER: Yes, the Claim 1 patent on the screen.

20 THE WITNESS: In Claim 1 they claim a process for
21 preparing a compound which they give as formula (I), and this
22 is a generic -- well, it is a generalized formula for the
23 compound azoxystrobin where W represents the methoxyacrylate
24 sidearm of azoxystrobin. And they are claiming to be able to
25 prepare it by reacting a compound of formula (II); formula (II)

1 being this chloro-pyrimidin intermediate with the
2 methoxyacrylate side chain of azoxystrobin with two hydroxy --
3 or two cyanophenyl in the presence of between .1 and 2 mol
4 percent of DABCO.

5 MR. TILLER: Okay. Can we -- Bonnie, can you go top
6 of column 20, please. There you go.

7 BY MR. TILLER:

8 Q. So, again, here's the reaction with two cyanophenyl in the
9 presence of what?

10 A. Between .1 and 2 molar percent of DABCO.

11 Q. Okay. What is your understanding of what it takes for a
12 patent to be found to be invalid?

13 A. My understanding is that according to Section 103 of
14 patent law, a patent can be regarded as invalid if it is viewed
15 as obvious to a person of ordinary skill in the art in light of
16 prior art at the time that the patent -- or at the time of the
17 invention.

18 Q. Okay. So, first of all, what's your understanding of what
19 is prior art?

20 A. Prior art in this context would mean any publication, any
21 patent, patent disclosure, really any prior disclosure that
22 occurs before the initial discovery is made.

23 Q. What is your understanding of the priority date for the
24 '761 patent? What's the earliest date at which there is a
25 filing with this application?

1 A. The priority date for the '761 patent is April 13th, 2006.

2 Q. Actually, I think if you go down to foreign application
3 priority date.

4 A. Oh, I'm terribly sorry, yes. April 25th -- or 26th, 2005.

5 Q. Okay. Now, are you familiar with the '138 patent?

6 A. Yes, I am.

7 Q. And, generally speaking, what is claimed in the '138
8 patent?

9 A. The '138 patent discloses a process for making
10 azoxystrobin by a two-step sequence; an etherification reaction
11 followed by a condensation reaction.

12 Q. What is your understanding of the difference between the
13 '138 patent and the '761 patent?

14 MR. SANTHANAM: Your Honor, we object, and if we
15 could have a sidebar for just a moment.

16 THE COURT: Okay.

17 (Bench conference held as follows:)

18 MR. SANTHANAM: They're trying to combine multiple
19 references with Weintritt. There's been no disclosure of that
20 in his report. The only disclosure in his report, if Your
21 Honor recalls, was in a claim chart supplied by counsel, and
22 you reserved your ruling on that claim chart.

23 In addition to that, under 35 USC 282, it is the
24 burden of the defendant in a patent infringement litigation to
25 put us on notice of all of the prior art of which they're going

1 to rely on.

2 THE COURT: Okay. Well, I want -- I don't -- so far
3 I haven't heard anything inconsistent with that, so I don't
4 know --

5 MR. SANTHANAM: Well, he's asking for the difference
6 between (unintelligible) and trying to say that the '138 patent
7 is prior art and relying on it. We object to that.

8 THE COURT: Okay. Are you going to be doing that?

9 MR. TILLER: We believe that -- yes. We believe that
10 very clearly we disclosed that the '138 patent -- we're
11 making -- to be very candid, Your Honor, we're making the exact
12 same argument that was made at the patent office. They are
13 aware of that. They've made a big deal about saying you're
14 just making the same argument that was made at the patent
15 office, and we are. We're not disputing that point.

16 THE COURT: Okay. They're saying you didn't disclose
17 that in discovery.

18 MR. TILLER: It was disclosed in -- you said we
19 couldn't use the claim chart. You didn't say we couldn't use
20 the substance of what was in that claim chart. The claim chart
21 very clearly talks about the '138 patent and the line --

22 MR. SANTHANAM: That is the only place in his report
23 that the '138 patent is mentioned in connection with the DABCO
24 patent, and on top of that, we would add under Section 282, 35
25 USC 282.

1 THE COURT: Okay. Let's stop.

2 (Bench conference concluded.)

3 THE COURT: Ladies and gentlemen, excuse you to the
4 jury room for a few minutes. Please don't talk about the case.

5 (At 2:38 p.m., jury leaves.)

6 THE COURT: All right. So does somebody want to hand
7 me up what the disclosure -- somebody for Syngenta, the
8 disclosure where you're saying this was not disclosed.

9 MR. SANTHANAM: Yes, Your Honor. In fact, the -- we
10 would point -- direct Your Honor to -- it's in the binder
11 that's before you, DX-30.

12 MR. TILLER: This isn't the whole thing.

13 MR. SANTHANAM: That's Dr. Lipton's report.

14 MR. TILLER: No, this is not it.

15 MR. SANTHANAM: We can put it up. We have a copy,
16 Your Honor.

17 THE COURT: All right. I've gotten it in front of me
18 now.

19 MR. SANTHANAM: If Your Honor would turn -- first of
20 all, the argument I was making -- the first part of the
21 argument is under 35 USC 282. It's the defendant's burden in a
22 patent infringement case to identify the prior art on which
23 they're going to rely, and they filed no such notice
24 whatsoever.

25 All we're relying on is the report that Dr. Lipton

1 submitted in this case, and if Your Honor would turn to the
2 back end of this report, starting on page 14, that's where he
3 discusses the '761 patent, and the only discussion of combining
4 Weintritt with any other patent, including the '138 patent, is
5 in the claim chart that Your Honor, if you would recall, we
6 filed a Daubert motion on, and you reserved your ruling with
7 respect to whether or not that they could raise the arguments
8 within that claim chart.

9 THE COURT: Okay. But if it's in the claim chart,
10 clearly they gave you notice of it.

11 MR. SANTHANAM: Well, that's a -- that's the
12 question, Your Honor. So the ruling was reserved on the claim
13 chart, and we moved to exclude all of those opinions, and to
14 the extent that they're now relying on that same claim chart,
15 we raise that same question because --

16 THE COURT: It's two different questions. The claim
17 chart is one question. Is it -- does it come into evidence.
18 But you're make -- your first argument was a notice argument.

19 MR. SANTHANAM: Yes.

20 THE COURT: So I do not understand how you can make a
21 notice argument, if you got notice in the chart.

22 MR. SANTHANAM: Well, the argument is based on
23 Section 282, Your Honor. They're supposed to file a notice, an
24 actual filing, 30 days before the trial.

25 THE COURT: 15 USC 282?

1 MR. SANTHANAM: 35 USC --

2 THE COURT: 35, I knew it was a 5, sorry. It's
3 well-established I'm not a patent lawyer. Would you go get the
4 statute for me. That will be interesting since I sent her to
5 get a book and young lawyers --

6 MR. SANTHANAM: It's 35 USC 282, Subsection C, Your
7 Honor, and I can read it for the record.

8 THE COURT: I mean, it says what it says. I'd just
9 like to look at it.

10 MR. SANTHANAM: Would Your Honor like a copy of it?
11 We have it here.

12 THE COURT: Well, she's bringing it to me.

13 This says the party asserting invalidity shall give
14 notice in the pleadings or otherwise in writing. That's what
15 you're saying requires them to file a notice, specifically 30
16 days before the trial starts?

17 MR. SANTHANAM: That's correct, Your Honor.

18 Typically a notice, a 282 notice, is filed, and we received no
19 such notice.

20 THE COURT: But you got notice in writing through his
21 report. I'm just having trouble understanding this. Maybe
22 it's because I don't know anything about patent litigation, but
23 as I read it, it says you have to get notice in writing, and
24 they gave you his report, which seem to give notice in writing,
25 so what's the problem?

1 MR. SANTHANAM: Well, it's a two-part problem.
2 It's -- one, they didn't file a 282 notice, and to the extent
3 that that's -- you know, to the extent the report is sufficient
4 notice, we object to the use of a --

5 THE COURT: Okay. Do you have a case that says that
6 282 requires a specific notice filed like you're suggesting as
7 opposed to some other kind of writing?

8 I assume you agree, Mr. Tiller, that you did not file
9 a specific thing entitled 282(c) notice?

10 MR. TILLER: We did not.

11 THE COURT: Okay.

12 MR. SANTHANAM: We don't have that research before
13 us, Your Honor.

14 THE COURT: Okay. All right. Now, what's -- that's
15 overruled. What's your second argument.

16 MR. SANTHANAM: The second objection or argument is
17 that the sole basis that they have for combining the '138
18 patent with the '761 is part of this claim chart, and we
19 objected to that claim chart as part of our Daubert motion, and
20 Your Honor reserved your ruling on that until later.

21 THE COURT: Well, you're just going to have to remind
22 me of your argument because --

23 MR. SANTHANAM: The argument, Your Honor -- and the
24 witness is on the stand, so I'll note that for the record, but
25 the argument is that counsel for Willowood provided the witness

1 a claim chart even before he began on this litigation.

2 THE COURT: Right, I remember that part, yep.

3 MR. SANTHANAM: That's the claim chart -- that's the
4 sole place in his report where he combines the '138 patent with
5 the '761 -- with Weintritt.

6 THE COURT: I'm sorry, let me just find my order so I
7 can be sure that I have it in front of me.

8 What I -- I covered a lot of ground in here.

9 Okay. What I said, this is what I recalled. I said,
10 the Court does not decide here whether this chart will be
11 admissible at trial.

12 MR. SANTHANAM: Correct. And if the chart is not
13 admissible, Your Honor, I mean, that's the sole -- if that's
14 not part of his report, there's absolutely nothing in the
15 record.

16 THE COURT: You are -- expert reports often aren't
17 admitted into evidence. I mean, you all didn't offer Dr.
18 Wilner's report into evidence. I mean, actually we were just
19 discussing that in the office this morning. You know, the
20 reports usually, in my experience, don't come into evidence.

21 MR. SANTHANAM: I will absolutely agree.

22 THE COURT: So I don't understand what you're -- I
23 don't understand your argument. I mean, the fact that the
24 chart is or is not admissible has nothing to do with the
25 information in the report.

1 MR. SANTHANAM: And our Daubert motion had nothing to
2 do with the admissibility of the chart, Your Honor. It was the
3 fact that they were making an argument that was formulated by
4 counsel, even before Dr. Lipton became involved in this case
5 and was provided to him. That was the basis of our objection.

6 And the way we understood Your Honor's ruling -- if
7 we misunderstood, we apologize -- but the way we understood it,
8 is that Your Honor reserved the ruling as to whether or not
9 that argument, those arguments within that claim chart, can
10 come in until later.

11 THE COURT: Well, I don't believe that's what I
12 meant. I said -- I'm sorry it was not clear. You all argued
13 about -- often argued about a lot of things that were not the
14 exact focus of the motion, and so I'm sorry if that wasn't
15 clear. But I don't want to cut you off in making your record,
16 so anything else you want to say to me about it.

17 MR. SANTHANAM: That's it. Those are the two
18 arguments, Your Honor.

19 THE COURT: What does the defendant want to say?

20 MR. TILLER: Your Honor, we have no intention --
21 first of all, as to the 282 issue, we believe that this --

22 THE COURT: As to the what?

23 MR. TILLER: As to the 282 issue, we believe that
24 this is sufficient notice, since 282 says "or otherwise."

25 Two, we have no intention of admitting this claim

1 chart, but -- and any insinuation that counsel -- that
2 Dr. Lipton is just regurgitating what counsel told him is
3 obviously strongly objected to. Dr. Lipton has formed his own
4 opinions in this regard by the --

5 THE COURT: I rejected that argument as a basis
6 explicitly, did I not, in summary judgment?

7 MR. TILLER: I'm --

8 THE COURT: I rejected Syngenta's argument.

9 MR. TILLER: Yes, I wanted to make sure I understood
10 what you were saying.

11 THE COURT: I apologize. Yeah, I'm sorry that wasn't
12 very clear.

13 MR. TILLER: I thought you were saying our argument.

14 THE COURT: No, no. I rejected -- I mean, I guess
15 I'm agreeing with you, so I may not have sounded like it.

16 MR. TILLER: Then I will sit down.

17 THE COURT: All right. That objection's overruled,
18 and I'll allow him to testify. Anything else before we bring
19 the jury back in?

20 MR. SANTHANAM: One other argument, Your Honor,
21 unrelated to this, that I do want to bring to Your Honor's
22 attention --

23 THE COURT: Yes.

24 MR. SANTHANAM: -- which is, if Your Honor recalls
25 from the June 2nd conference, we did address a second motion to

1 exclude with respect to commercial reasonableness. Rather than
2 making that full-blown objection during -- while the jury's
3 here, if I do object, I'll make note of it by saying "subject
4 to the Court's prior order."

5 THE COURT: What did I say about that? Commercial
6 reasonableness.

7 MR. TILLER: I don't believe Dr. Lipton's going to go
8 into that anyway so --

9 THE COURT: Good. Then I don't have to remember
10 it --

11 MR. TILLER: Maybe I'm wrong, but --

12 THE COURT: -- he needs -- can you get the witness
13 some more.

14 MR. TILLER: Yes, I will get him some water.

15 THE WITNESS: Thirsty business.

16 THE COURT: Okay. All right. You can bring the jury
17 back in.

18 (At 2:38 p.m., jury arrives.)

19 THE COURT: All right. We're ready to proceed, and I
20 can't remember if there was a question pending or not, so just
21 ask another question.

22 MR. TILLER: I don't remember, either, Your Honor,
23 but thank you.

24 BY MR. TILLER:

25 Q. Dr. Lipton, what's your understanding of the disclosure

1 date of the '138 patent?

2 A. Could we have the '138 patent?

3 Q. Can we have the '138 patent, please? It's probably the
4 second page.

5 THE COURT: I'm sorry. Keep your voice up.

6 MR. TILLER: It is probably the second page, Bonnie.

7 The date of the patent?

8 THE WITNESS: Is December 8th, 1998.

9 THE COURT: This is the '138 patent we're looking at
10 now?

11 MR. TILLER: That's the '138 patent.

12 THE WITNESS: This is the '138 patent.

13 BY MR. TILLER:

14 Q. And again, the earliest date of the '761 patent was
15 April 26, 2005, correct?

16 A. That is correct.

17 Q. Okay. So is it your understanding that the '138 patent is
18 prior art to the '761 patent?

19 A. Yes.

20 Q. What is the difference -- very simply, what is the
21 difference between the '138 patent and the '761 patent?

22 A. The only substantive difference between the two patents is
23 the use of catalytic quantities of DABCO in the condensation
24 step in the '761 patent.

25 Q. Let me break that down a little bit. First of all, you

1 testified earlier that the '138 covered etherification followed
2 by condensation to make azoxystrobin, is that correct?

3 A. That is correct.

4 Q. Does the '761 patent cover or claim etherification in any
5 way?

6 A. No, it does not.

7 Q. Okay. So that's one difference.

8 A. Yes.

9 Q. And then, explain what you meant by a catalytic amount of
10 DABCO.

11 A. So the '761 patent describes --

12 THE COURT: Can you -- I'm getting a little feedback
13 on his mike, so I'm just going ask her to adjust that a little
14 bit so I can hear you better.

15 THE WITNESS: Is this better?

16 THE COURT: Yes.

17 THE WITNESS: The '761 patent describes a
18 condensation step in which between .1 and 2 molar percent of
19 DABCO is introduced to catalyze the condensation step.

20 BY MR. TILLER:

21 Q. And what does it mean to catalyze?

22 A. Catalysis means that a substance, a catalyst, is
23 introduced into a reaction which will make the reaction go
24 faster, and the catalyst itself is not consumed in the
25 reaction.

1 MR. TILLER: And just for the record, I think I'm
2 right about this, but does '761 patent and the '138 patent have
3 already been admitted into evidence as Plaintiff's 3 and 4,
4 correct?

5 THE COURT: The clerk says yes.

6 MR. TILLER: Okay. I'd like to show what has been
7 marked as DX-6. Could you go the first page, please, Bonnie.
8 Do you recognize -- could you just go ahead and call that out,
9 Bonnie, that first whole page.

10 BY MR. TILLER:

11 Q. And what is this, Dr. Lipton?

12 A. This is what's been referred to as the Weintritt patent.

13 Q. Now this is the application that led to --

14 A. This is the application, correct.

15 Q. And what is the publication date?

16 A. The publication date is May 15th, 2003.

17 Q. So is it your understanding that this is also prior art to
18 the application that led to the '761 patent?

19 A. Yes, it is my understanding.

20 Q. What is your understanding -- or how about this? Can you
21 briefly describe what is covered in the Weintritt publication
22 or application?

23 A. The Weintritt application discloses a process for making
24 asymmetrically substituted 2,6-di-bis(aryloxy)pyrimidines, of
25 which azoxystrobin would be a member, using a catalytic amount

1 of DABCO in a condensation step. But the quantity of DABCO in
2 this Weintritt patent is between 2 and 40 molar percent.

3 Q. All right. Let me first ask -- I missed a question
4 earlier, but then we're going come back to that.

5 In '138, you said '138 does not deal with a catalytic
6 amount of DABCO, correct?

7 A. That's correct.

8 Q. Does the '138 patent disclose use of a catalyst?

9 A. Yes, it does. The catalyst disclosed in the '138 patent
10 is copper chloride.

11 Q. And is copper chloride and DABCO similar to each other?

12 A. Beyond the fact they both catalyze this condensation step,
13 there are really no chemical similarities between the two.

14 Q. Okay. So the only similarity is that they act as a
15 catalyst?

16 A. Correct.

17 Q. Okay. Now, in talking about Weintritt, would you agree
18 that the Weintritt application covers the synthesis of many
19 molecules?

20 A. Yes.

21 Q. Okay. You assert that one of them -- strike that.

22 Do you assert that one of those molecules that is
23 disclosed in Weintritt is azoxystrobin?

24 A. Yes.

25 Q. I'd like to show you what's on the screen right now as

1 Defendant's Demonstrative 1. Can you please explain what's on
2 this first page?

3 A. On this first page is Structure 1 from the Weintritt
4 patent. This is the structure that the Weintritt patent says
5 they are concerned with making. And it's a generic structure,
6 so it has a number of groups, such as A-R^{1X}, and
7 L1 through L5. All of these are generics that describe a broad
8 class of substituents at those positions.

9 Q. So let's look at those positions. Bonnie, could you go to
10 the next page. So let's, first, talk about these substituents
11 that are described here.

12 A. In paragraph 17 of Weintritt, Weintritt explains that the
13 AR-1 substituent can be a substituted or unsubstituted aryl or
14 heterocycl -- and the 2-cyanophenyl group of azoxystrobin is,
15 in fact, a substituted aryl group.

16 THE COURT: A substituted what?

17 THE WITNESS: Aryl group.

18 THE COURT: A-R-Y-L?

19 THE WITNESS: A-R-Y-L, yes.

20 MR. TILLER: And can you -- where is the -- Bonnie,
21 can you not -- and then -- where is the -- leave that there,
22 please. Thank you.

23 BY MR. TILLER:

24 Q. Where is the substituted aryl 2-cyanophenyl group?

25 A. It's highlighted in orange on this screen.

1 Q. Okay. That is orange. I had it as red for a second.
2 Bonnie, could you go to the next page, please. Could you
3 explain this, Doctor?

4 A. In Paragraph 18 of the Weintritt application, the
5 statement is made that the X-substituent represents a variety
6 of different things, hydrogen, fluorine, chlorine, or bromine.
7 And in azoxystrobin, that substituent would be hydrogen, and
8 that's highlighted in green.

9 MR. TILLER: Bonnie, could you go to the next slide,
10 please. Thank you.

11 THE WITNESS: In paragraph 20 of the Weintritt
12 application, it is stated that L1, L2, L3, and L4 are identical
13 or different and independently of one another represent a
14 variety of things, first of which is hydrogen. In
15 azoxystrobin, all four of those groups are hydrogen. They are
16 highlighted in purple.

17 MR. TILLER: Bonnie, could you go to the next page,
18 please.

19 THE WITNESS: In paragraph 21 in the Weintritt
20 application, it states that L5 represents one of the groups
21 below. There is a list of groups, the first of which is the
22 methoxyacrylate side chain of azoxystrobin, which I have
23 highlighted in blue.

24 BY MR. TILLER:

25 Q. So just to make sure we're all saying the same thing here,

1 the orange group is the 2-cyanophenyl group?

2 A. Yes.

3 Q. And the blue group is the methoxyacrylate group?

4 A. That is correct.

5 MR. TILLER: Okay. Bonnie, can you go to the next
6 page.

7 BY MR. TILLER:

8 Q. And what are we looking at there?

9 A. That is the structure of azoxystrobin.

10 Q. So based on that description in paragraphs 15 through 20
11 of the Weinritt publication, do you believe that a person of
12 ordinary skill in -- actually, I have to ask a question first
13 that I forgot about.

14 What is a -- do you know what a person of ordinary
15 skill in the art is?

16 A. Yes. I have defined a person --

17 Q. Let me ask you generally. You stated that your
18 understanding of invalidity -- a patent invalidity is if it
19 would have been obvious to a person of ordinary skill in the
20 art, correct?

21 A. Yes.

22 Q. What is your belief or who is your belief is the person of
23 ordinary skill in the art in this particular matter?

24 A. For this matter, I would say a person of ordinary skill in
25 the art is someone with a bachelors or a masters level

1 education in chemistry or chemical engineering with experience
2 in organic synthesis, and between two to five years experience
3 in the agriculture chemical industry.

4 Q. Okay. Using that as your frame of reference, do you
5 believe that person of ordinary skill in the art would have
6 known that Weinritt -- and this would be looking at Weinritt
7 in 2003 or 2004 -- that would have known that Weinritt would
8 have disclosed the synthesis of azoxystrobin?

9 A. Yes.

10 Q. Okay. Now, does Weinritt disclose a condensation
11 reaction?

12 A. Yes, it does.

13 Q. Could you -- we can bring it up if you want, but could you
14 just generally explain the condensation reaction in Weinritt?

15 A. In Weinritt, the condensation reaction involves the
16 reaction of 2-cyanophenyl with the cyanoacrylate-substituted
17 chloropyrimidine intermediate that is the product of the
18 etherification reaction in the presence of between 2 and 40 mol
19 percent DABCO and also in the presence of an acid acceptor.

20 Q. Okay. Let's take that apart a little bit. How does the
21 condensation reaction disclosed in Weinritt compare to the
22 condensation reaction disclosed in the '138 patent?

23 A. The condensation reaction is the same with the addition of
24 the catalytic DABCO.

25 Q. I understand. I was going to get to that. But the

1 reaction itself, the reactants, excluding DABCO, are the same?

2 A. Yes, they are.

3 Q. Okay. So then, again, Weintritt discloses use of DABCO.

4 How much DABCO is disclosed in Weintritt?

5 A. In Weintritt, they used between 2 and 40 mol percent of
6 DABCO.

7 Q. Okay. Now, is there anything in the disclosure in
8 Weintritt that you saw that would suggest to a person of
9 ordinary skill in the art that the 2 molar percent, the bottom
10 of what's claimed in Weintritt, is there anything to suggest
11 that 2 molar percent DABCO is a hard floor below which DABCO
12 would not catalyze the reaction?

13 A. No. There certainly is nothing to indicate that 2 mol
14 percent represents a hard limit. And, you know, quite the
15 contrary. The language in the Weintritt application says, in
16 general, between 2 and 40 mol percent, which makes it sound,
17 you know, quite a bit less certain that 2 mol percent
18 represents some limit to reactivity.

19 MR. TILLER: Bonnie, can you please bring up
20 paragraph 127 of Weintritt. Go up, please, 127 and 128.

21 BY MR. TILLER:

22 Q. Is this what you're referring to in Weintritt?

23 A. Yes -- yes, it is.

24 Q. Okay. And you're specifically referring to -- for
25 carrying out the process according to the invention, in

1 general, from 2 to 40 molar percent, preferably from 2 to 20
2 molar percent of DABCO is employed --

3 A. Yes.

4 Q. -- that's what you're referring to? Okay.

5 THE COURT: And so just -- that diazabicyclo
6 octane --

7 THE WITNESS: Diazabicyclo 2.2.2 octane is the
8 official name of DABCO, and you can see why we call it DABCO.

9 THE COURT: I knew I butchered it. I'm so sorry.
10 Okay. Go ahead.

11 MR. TILLER: Doesn't quite roll off the tongue, does
12 it?

13 THE COURT: No.

14 BY MR. TILLER:

15 Q. So while Weintritt discloses the use of from 2 to 40 molar
16 percent in general, would you still, nonetheless, concede that
17 Weintritt claims 2 to 40 molar percent, correct?

18 MR. SANTHANAM: Objection, leading.

19 THE COURT: Well, sustained.

20 BY MR. TILLER:

21 Q. How much DABCO is claimed by Weintritt?

22 A. From 2 to 40 mol percent.

23 Q. Okay. Now, Dr. Lipton, let me take you to paragraph 109,
24 please.

25 THE COURT: And you're still looking at the Weintritt

1 patent?

2 MR. TILLER: At Weintritt, yes, I am.

3 BY MR. TILLER:

4 Q. Why don't you take a second to read that paragraph.

5 A. Okay.

6 Q. Now, would you agree with me or do you see where it says:
7 It is extremely surprising -- and I'll cut to the chase -- it's
8 extremely surprising that from 2 to 40 molar percent works. Do
9 you see that?

10 A. Yes, I do.

11 Q. Does that statement in Weintritt lead you to believe or do
12 you believe that that statement in Weintritt would have led a
13 person of ordinary skill in the art to believe that using less
14 than 2 molar percent would not have worked?

15 A. No, I don't.

16 Q. Why not?

17 A. Well, it was surprising to Weintritt because prior art had
18 always used more than one equivalent, more than 100 mol
19 percent, so it was surprising to them that less would work.
20 But there was nothing intrinsic to 2 to 40 mol percent that
21 would indicate that that would be the limit.

22 Q. What do you mean by molar equivalent -- or what is meant
23 by "molar equivalent"?

24 A. So "mol percent" in this case means for every molecule of
25 a reactant, how many molecules of a second reactant are

1 present. And so, 2 to 40 mol percent means for 100 molecules
2 of reactant, would you have 2 to 40 molecules of the catalyst
3 present.

4 Q. So what does "molar equivalent" mean?

5 A. Well, one equivalent would be a one-to-one ratio.

6 Q. So 100 percent?

7 A. 100 mol percent.

8 Q. Okay. So it was surprising to Weintritt -- so the prior
9 art, as you say, disclosed use of a molar equivalent, or 100
10 molar percent DABCO, correct?

11 A. Yes, I think at least one equivalent.

12 Q. And Weintritt, then, disclosed that 2 -- as low as 2 molar
13 percent could be used?

14 MR. SANTHANAM: Objection, leading.

15 THE COURT: Well, overruled as to that question.

16 THE WITNESS: Yes. That is what Weintritt discloses.

17 BY MR. TILLER:

18 Q. Based on those disclosures in the '138 patent and
19 Weintritt, do you believe that the invention disclosed in the
20 '761 patent would have been obvious to a person of ordinary
21 skill in the art in 2004 in light of the '138 patent and the
22 Weintritt disclosure?

23 A. Yes, I do.

24 Q. Please explain.

25 A. Well, because nothing within the Weintritt patent

1 categorically states that 2 mol percent is the lower limit,
2 it's quite common in the business of catalysis to try to
3 minimize catalyst loading by going to lower and lower levels of
4 catalyst in a reaction. And so, one would naturally, I think,
5 want to explore just how low one could go and still get
6 sufficient catalysis for your reaction.

7 Q. Why does one want to explore as low as one can go?

8 A. Well, there's several reasons why you would want to do
9 this. The first reason is, in some cases, catalysts are quite
10 expensive, and so you want to minimize costs by using the
11 lowest amount of catalyst needed.

12 A second reason why you would want to do this is
13 because catalysts aren't consumed in reactions. They are
14 necessarily present as an impurity in your product, and
15 purification is usually easier with lower levels of impurity,
16 so lowering the amount of catalyst could, in fact, make
17 purification substantially easier.

18 A third reason is that some catalysts could be toxic,
19 and to minimize toxicity, one might want to use lower levels of
20 catalyst. So any of these reasons could be a reason to go
21 lower than the published amount.

22 Q. And do you believe that that would have been true for the
23 person of ordinary skill in the art in 2003 after the Weintritt
24 publication was published?

25 A. Yes, I do.

1 Q. And do you believe that a person of ordinary skill in the
2 art in 2003 or 2004 would have attempted to find an even lower
3 level of DABCO that would have provided sufficient catalytic
4 effect below 2 molar percent given the disclosures in the '138
5 patent and Weintritt applications?

6 A. Yes, I do.

7 Q. Do you believe that that person of ordinary skill in the
8 art would have reasonably believed that lower levels of DABCO
9 would have led -- or strike that.

10 Do you believe that a person of ordinary skill in the
11 art would have reasonably --

12 THE COURT: Slow down.

13 MR. TILLER: I'm sorry, Your Honor.

14 BY MR. TILLER:

15 Q. Do you believe that a person of ordinarily skill in the
16 art would have reasonably believed that using lower levels of
17 DABCO below 2 percent would have worked?

18 A. Given what's available in the Weintritt patent, there is
19 no reason to believe that going to 1.9 mol percent, 1.5 mole
20 percent wouldn't offer some amount of catalytic benefit as
21 well. So, there would be every expectation that you could go
22 lower and still see some amount of catalysis.

23 THE COURT: And still see what?

24 THE WITNESS: Some amount of catalysis.

25 BY MR. TILLER:

1 Q. And again, what is catalysis?

2 A. Catalysis is the property of speeding up a reaction.

3 Q. I'd like to have you take a look at Defendant's Exhibit
4 35. I think that's -- at least some portion of that is in your
5 binder.

6 MR. SANTHANAM: Your Honor, again, we object to this,
7 and if we may have a quick sidebar on this.

8 THE COURT: All right.

9 (Bench conference as follows:)

10 THE LAW CLERK: I'm sorry. I just wanted to clarify
11 whether Defendant's Exhibit 35 has been admitted.

12 THE COURT: All right.

13 MR. SANTHANAM: There's absolutely no disclosure in
14 any of his reports about this document or opinions related to
15 it.

16 MR. TILLER: This -- we're not relying on this as
17 prior art.

18 THE COURT: Okay.

19 MR. TILLER: This is just support. This is just
20 essentially anecdotal support for what -- I mean, Dr. Lipton
21 has already testified to this, the exact same issue.

22 MR. SANTHANAM: He's offered no opinions in any of
23 his reports. We've had no notice about any opinions that he
24 has.

25 MR. TILLER: This is not prior art.

1 THE COURT: You're saying it wasn't disclosed as
2 something he looked at?

3 MR. SANTHANAM: Exactly. There was no disclosure of
4 opinions related to this document.

5 MR. TILLER: I'll withdraw.

6 THE COURT: Okay.

7 MR. TILLER: It's just easier.

8 THE COURT: Go ahead.

9 BY MR. TILLER:

10 Q. So let me just make sure, Doctor, that we've kind of
11 dotted all the I's and crossed all the T's.

12 Is it your opinion to a reasonable degree of
13 scientific probability that the invention claimed in Claim 1 of
14 the '761 patent would have been obvious to a person of ordinary
15 skill in the art at the time that the invention was made in
16 light of the '138 patent and Weintritt application?

17 A. I do.

18 Q. Now, are you aware that the patent examiner at the patent
19 office -- let me ask you this first.

20 What does it mean for -- what is a prosecution
21 history of a patent application?

22 A. A prosecution history is the patent application, the
23 filing, as well as the response of the patent examiner and any
24 back and forth communications that may have taken place with
25 the patent applicant.

1 Q. Okay. Are you aware that the patent application -- or
2 that the patent examiner, during prosecution of the application
3 that led to the '761 patent, initially rejected the application
4 based on the exact same argument that you're raising here
5 today?

6 A. Yes, I do.

7 Q. Okay. Now, I'd like you to take a look at Defendant 5,
8 which should be in your binder.

9 MR. TILLER: And, Judge, I would move, and I need a
10 quick clarification here. What's in the binder is a portion of
11 the prosecution history, because the prosecution history was
12 about 500 pages, and I didn't want to --

13 THE COURT: Okay.

14 MR. TILLER: -- make too many copies of it when we
15 were only going to be looking at one or two pages. So while
16 what is in here is a portion of the prosecution history, we
17 would move for admission of the entire prosecution history and
18 we will make sure that's included in the record.

19 MR. SANTHANAM: We don't have any objection, Your
20 Honor.

21 THE COURT: All right. Defendant's 5 will be
22 admitted. And this is part of Defendant's 5 that's here in the
23 notebook.

24 MR. TILLER: This is a small portion.

25 THE COURT: Okay.

1 BY MR. TILLER:

2 Q. So let me first take you, Doctor -- you've already
3 testified that the examiner raised this exact same issue,
4 correct? You're aware of that?

5 A. Yes, I am.

6 Q. And then the applicant made an argument, correct?

7 A. Yes, they did.

8 Q. And, in fact, that argument, I believe, is on -- and
9 unfortunately, these are not numbered because this was taken
10 straight off the patent trademark office website.

11 THE COURT: Okay. Just --

12 MR. TILLER: I'm trying to find the page, Your Honor.
13 It's right around 12 or 13, it's the response. What page is
14 that, Bonnie? Keep going, please. Keep going. Keep going.
15 Keep going. There it is. If you go to the next page, Bonnie.

16 BY MR. TILLER:

17 Q. Have you had a chance to review the response to the
18 rejection that was made by the patent examiner?

19 A. I have.

20 Q. Okay. Looking at the last two paragraphs, please, Bonnie,
21 you will see that the -- do you see where it says: The
22 applicant notes the present claims recites the presence of
23 0.1 -- of between 0.1 and 2 molar percent of DABCO, a
24 percentage lower than that described in Weintritt. Do you see
25 that?

1 A. Yes, I do.

2 Q. The applicant goes on to say: In Weintritt, DABCO is used
3 in less than molar amounts, that is, from 2 molar percent to 40
4 molar percent. Do you see that?

5 A. Yes.

6 Q. Later on, the applicant says: In view of Weintritt, a
7 person of ordinary skill in the art would be directed to use
8 the amount of DABCO recommended by Weintritt, i.e., from 2
9 molar percent to 40 molar percent. Do you see that?

10 A. Yes.

11 Q. And then, the applicant goes on to say: In doing so, he
12 would not arrive at the invention presently claimed, which
13 recites between 0.1 and 2 molar percent. And, as indicated on
14 page 5, the term "between" is defined as more than 0.1 and less
15 than 2. Do you see that?

16 A. I do.

17 Q. And is it your understanding that after this document was
18 filed, that the examiner issued the patent?

19 A. I do.

20 Q. Okay.

21 THE COURT: And if I could just clarify. The
22 applicant being referred to here is Syngenta, is that right --

23 MR. TILLER: It's technically --

24 THE COURT: -- or their predecessor?

25 MR. TILLER: It's actually technically Dr. Whitton

1 and the inventors.

2 THE COURT: Okay. That's the inventor?

3 MR. TILLER: Yeah.

4 THE COURT: Thank you. I just don't know who the
5 applicant is.

6 MR. TILLER: I'm sorry.

7 BY MR. TILLER:

8 Q. So you understand that the examiner ultimately issued the
9 patent, notwithstanding the argument that you're raising here?

10 A. I do.

11 Q. Okay. So would you agree with me that in order for you to
12 be correct, the examiner would have had to have been incorrect?

13 A. Yes, I disagree with the examiner's conclusion.

14 Q. Okay. So you believe the examiner was incorrect?

15 A. I do.

16 Q. Okay. Let's look at the remaining claims that are being
17 asserted in this case.

18 MR. TILLER: Bonnie, if you could bring up the '761
19 patent, Claims 3, 4, and 5.

20 BY MR. TILLER:

21 Q. Dr. Lipton, could you explain what is being claimed in 3,
22 4, and 5?

23 A. In 3, 4, and 5, the claims are that the reaction that they
24 claim in Claim 1, that is to say, the DABCO catalyzed
25 condensation, should be carried out in an inert solvent, that's

1 Claim 3. And then, moreover, in Claim 4, that the inert
2 solvent should be one of a short list, including isobutyl
3 ketone, cyclohexanone, DMF, isopropyl acetate, or diisopropyl
4 ethylamine.

5 Q. Okay. You mentioned DMF. I don't see DMF. Which one is
6 DMF?

7 A. DMF is shorthand for N,N-Dimethyl formamide, which is the
8 last one in the list.

9 Q. Can you highlight that in Claim 4, Bonnie. That's the
10 wrong one, please.

11 THE WITNESS: It is the other N, N.

12 MR. TILLER: It's the other N, N.

13 THE COURT: What's the abbreviation you're using for
14 that?

15 THE WITNESS: It commonly abbreviated DMF.

16 BY MR. TILLER:

17 Q. So Claim 3 is claiming the reaction in an inert solvent,
18 is that right?

19 A. Yes, that is correct. Claim 4 lists a short list of inert
20 solvents to be used. And Claim 5 narrows it down to DMF.

21 Q. Do you believe that the use of DMF is disclosed in the
22 '138 patent?

23 A. Yes, I do.

24 MR. TILLER: Okay. Bonnie, could we quickly bring up
25 the '138 patent. Please go to where DMF is identified.

1 BY MR. TILLER:

2 Q. Do you see DMF in there being used, Doctor?

3 A. Yes, I do.

4 Q. Do you believe that DMF is disclosed as being used in the
5 Weintritt application?

6 A. Yes, I do.

7 MR. TILLER: Bonnie, could we please go to Weintritt.
8 I think it's in paragraph 115. It might have been in 114, too.

9 MR. SANTHANAM: I'm going to object this as leading,
10 Your Honor.

11 THE COURT: Okay. Well, what's the question?

12 MR. TILLER: We're trying to just show --

13 THE COURT: Okay. Ask him the question.

14 BY MR. TILLER:

15 Q. Where is DMF shown in the Weintritt application?

16 MR. SANTHANAM: Your Honor, we object to leading.

17 THE COURT: He's asking him where, so he can answer
18 where. He already said it was in there, so he can answer that
19 question. Go ahead.

20 MR. SANTHANAM: The paragraph is right in front of
21 him, Your Honor.

22 THE COURT: I'm sorry?

23 MR. SANTHANAM: The paragraph is right in front of
24 him. At this point, it's leading.

25 THE COURT: Overruled.

1 THE WITNESS: Well, DMF appears in several places in
2 the Weintritt patent. But in this paragraph, it's found about
3 three-quarters of the way down on the right.

4 MR. TILLER: Okay. Could we go back to the '761
5 patent, Bonnie, and could we please take a look at Claims 9 and
6 10, which are the remaining claims being asserted in this case.

7 BY MR. TILLER:

8 Q. Could you please explain what is being claimed in Claims 9
9 and 10, Doctor?

10 A. In 9, the claim is that the condensation reaction should
11 be carried out in the presence of an acid acceptor. Claim 10,
12 then, narrows the focus down to two particular bases, potassium
13 carbonate and sodium carbonate.

14 Q. You've changed words on there so let me ask --

15 A. Yes, I did.

16 Q. So, first of all, what's an acid acceptor?

17 A. And acid acceptor is another term for a base.

18 Q. So when you use the term "base" referring to Claim 10,
19 that meant what?

20 A. An acid acceptor.

21 Q. Okay. So is it your understanding -- if we could look at
22 '138 again.

23 Is it your understanding that '138 patent discloses
24 the use of sodium or potassium carbonate as an acid acceptor?

25 A. Yes, it does.

1 Q. If you could take a moment to read that. Do you see the
2 use of sodium or potassium carbonate?

3 THE COURT: I'm sorry. I don't think --

4 MR. TILLER: Do you see the use of --

5 THE COURT: I don't know what we're looking at.

6 MR. TILLER: This is '138, I'm sorry.

7 THE COURT: Ask the witness.

8 BY MR. TILLER:

9 Q. Do you know what we're looking at here?

10 A. Yes.

11 Q. And what is it?

12 A. This is a section of the '138 patent.

13 Q. And do you see in the '138 patent the disclosure of the
14 use of sodium or potassium carbonate?

15 A. Yes, I do.

16 MR. SANTHANAM: I'm going to continue to object to
17 this as leading, Your Honor. He's basically pointing the
18 witness to portions of the patent, telling the witness what is
19 there.

20 MR. TILLER: I'm happy to have him read the whole
21 thing, Your Honor.

22 THE COURT: Okay. We'll just sit here while he reads
23 the whole thing if that's what we need do.

24 MR. TILLER: I'm hoping we can avoid that.

25 THE COURT: Yeah. Go ahead.

1 BY MR. TILLER:

2 Q. Let's take a look at Weintritt.

3 A. Okay.

4 Q. Do you believe that Weintritt discloses the use of a
5 sodium or potassium carbonate?

6 A. Yes, I do.

7 Q. Could you please identify where that is?

8 A. Can somebody -- oh, no, never mind. I found it.

9 Q. And where is it?

10 A. It is the DTX-6 tab in my folder.

11 Q. And where -- so you just found Weintritt, right?

12 A. Yeah, I just found Weintritt.

13 Q. You haven't found sodium or potassium carbonate yet?

14 Let's -- you believe it's in there, correct?

15 A. Yes, I do.

16 Q. Okay. Let's move on. So is it your opinion based on the
17 disclosures that we just looked at, that Claims 1, 3, 4, 5, 9,
18 and 10 are to a reasonable degree of scientific probability
19 invalid in light of the '138 patent and Weintritt applications?

20 A. Yes, I do.

21 MR. TILLER: Okay. Now moving, on to a different
22 subject, Your Honor. I don't know -- I don't have that much
23 more. I don't know if you want to take --

24 THE COURT: Do you have about five minutes or is it
25 longer than that?

1 MR. TILLER: It might be a little more than that.

2 THE COURT: All right. We'll take our afternoon
3 break at this point, then. Ladies and gentlemen, please
4 remember not to discuss the case among yourselves during the
5 break, and avoid contact with anyone. And come back at 3:30.
6 Leave your notes in your chair.

7 (Jury excused.)

8 THE COURT: Okay. Anything before -- that anybody
9 wants to put on the record or bring my attention towards before
10 we take our break? No? All right. We'll be in recess till
11 3:30.

12 (At 3:14 p.m. break taken.)

13 (At 3:30 p.m., break concluded.)

14 THE COURT: Okay. Are we ready? Yes.

15 You can bring the jury in.

16 (Jury panel is present.)

17 THE COURT: All right. Mr. Tiller, you may continue.

18 MR. TILLER: Thank you, Your Honor.

19 BY MR. TILLER:

20 Q. Dr. Lipton, are you aware of a laboratory known as JDM?

21 A. Yes, I am.

22 Q. And what is your understanding of JDM?

23 A. I understand that it's an analytical laboratory which was
24 established by Mr. Mundhra of Willowood Limited.

25 Q. Are you aware that in 2015 JDM tested certain samples of

1 the azoxystrobin technical manufactured by Tai He?

2 MR. SANTHANAM: Objection. Foundation.

3 MR. TILLER: That's the question I'm asking, are you
4 aware.

5 THE COURT: Okay. Well, he can answer that question.

6 THE WITNESS: Yes, I am aware.

7 BY MR. TILLER:

8 Q. And have you had an opportunity to review the results of
9 the JDM testing?

10 A. I have.

11 Q. What did the JDM testing reveal?

12 MR. SANTHANAM: Objection. Hearsay.

13 THE COURT: Well, ladies and gentlemen, I'm so sorry
14 to make you just go right back into the jury room, but if
15 you'll step back into the jury room for a moment.

16 (The jury panel left the courtroom.)

17 THE COURT: I was afraid I would not remember
18 correctly, so I just am trying to remember and lay my hands on
19 what I said about JDM -- the JDM testing, if anything.

20 MR. SANTHANAM: Your Honor, the ruling you made was
21 on separate testing by CAC, but the -- it was Willowood that
22 objected to evidence of CAC's testing coming in before the
23 jury. They made a hearsay objection, and to the extent that
24 the CAC test results are hearsay, those exact same arguments
25 apply to the JDM. So our position would be either all of it

1 comes in or none of it comes in.

2 THE COURT: What does Willowood say?

3 MR. TILLER: Your Honor, first of all, as you are
4 well aware, experts can rely on hearsay to form an opinion and
5 that's what we're going to be asking him to do is to form an
6 opinion based on, in part, the JDM testing. What I'm going to
7 ask him about are the actual chromatograms and the actual test
8 results that came out of the machines.

9 If you remember, there was a distinction and Syngenta
10 argued with regards to the CAC testing that if the data or if
11 the alleged hearsay statement is what literally comes out of
12 the machine, that that is not hearsay; and indeed, they are
13 right about that. But that's not what was in the CAC e-mail.
14 The CAC e-mail was sort of a human analysis of the results of
15 something, which we didn't even know what it was. This -- I'm
16 going to ask Dr. Lipton: Have you had a chance to look at the
17 data? What do you -- what is your opinion as a result?

18 MR. SANTHANAM: Your Honor, there is no distinction
19 between the two. The witness is talking about what tests were
20 performed, what samples -- again, he's going to have to lay
21 foundation for what samples were tested. All of that is
22 hearsay. To the extent that the CAC testing doesn't come in, I
23 mean, those exact same arguments apply to JDM and other testing
24 that Willowood might try to put in.

25 THE COURT: Okay. What opinion are you going to be

1 asking him? I don't --

2 MR. TILLER: JDM did not find DABCO. PSL did not
3 find DABCO. Based on that, what is your opinion about whether
4 DABCO existed?

5 MR. SANTHANAM: And, Your Honor, our objection would
6 be how does he even know what was tested? How does he know
7 what sample was tested? All of that comes from hearsay and the
8 basis of their objection to having the CAC results come in is,
9 well, we don't know how that --

10 THE COURT: Didn't I say that somebody could talk
11 about the CAC test, they just couldn't come in substantively?
12 Do I not remember that correctly?

13 MR. SANTHANAM: You indicated that we could rely --
14 an expert could rely on it, Your Honor. There needs to be a
15 little bit of clarification in the sense that if they bring in
16 JDM's testing and PSL's testing we would ask for the same
17 instruction that this testing should not be taken for the truth
18 of the matter asserted. Furthermore, under Rule 703, you know,
19 to the extent that they do want to bring in this information,
20 they have to show that the probative value substantially
21 outweighs the prejudicial effect. The comprise we would offer
22 is, you know, if some of it comes in, all of it comes in.

23 THE COURT: Well, I'm -- at this point you've got to
24 do more. He can't just testify to the results as if offering
25 them for the truth -- I'm looking at the Defendant -- because

1 they would be hearsay, nothing else appearing, if offered for
2 the truth. If you're trying to get the results in through this
3 witness, I can't think, at least in terms of the question you
4 just asked him -- and that's all that really I have in front of
5 me right this second is that one question that you just asked
6 him. So, you know, experts can rely on stuff, but you've got
7 to go through all the steps.

8 MR. TILLER: And the steps being: Have you looked at
9 the actual data?

10 THE COURT: I'm not going to tell you how to did it.

11 MR. TILLER: Well, I don't want to do it in front the
12 jury, I guess is my point. Shall we go through it here now?
13 Should I ask the questions?

14 THE COURT: I'm just the judge. I don't -- I don't
15 know what you are asking me. There was an objection to this
16 one question and I'll sustain it as to that one question
17 because that's not -- that's hearsay.

18 Now, that said, I don't mean that you can't show him
19 stuff and ask for opinions on things, you know, and then
20 Syngenta can show him other tests. I don't know. You
21 all -- if this is how you all want to use your time, that's
22 okay with me. We'll get to limiting instructions if and when
23 it ever gets to that point, but, I mean, I don't have any
24 problem with you doing that, just like I don't have any
25 problem -- I'm remembering correctly, right, that I said that

1 Syngenta could rely on an expert?

2 MR. SANTHANAM: Yes, Your Honor. And the question --
3 I mean, the clarification we would want is if we put on an
4 expert, then we should be allowed to show the CAC testing in as
5 much as they're allowed to show the JDM testing or any other
6 testing that they want to put in front of the jury.

7 THE COURT: Well, we'll cross that bridge when we
8 come to it. I don't know what they are going to do and how --
9 but, you know, generally speaking, inadmissible evidence that
10 is the basis for an opinion -- what does the rule say? Let me
11 just -- okay. I'm remembering it correctly. If the facts or
12 data would otherwise be inadmissible, the proponent, whichever
13 one of you it is, may disclose them to the jury only if their
14 probative value outweighs their prejudicial effect.

15 That's what you were saying, right?

16 MR. SANTHANAM: I believe it is substantially
17 outweighs, but I may have that wrong.

18 THE COURT: Substantially outweighs. You are
19 correct. Substantially outweighs. So, you know, we're going
20 to do it the same way, I would think, each way. It's the same
21 rule that's going to apply, isn't it? Right?

22 MR. TILLER: Your Honor, I'll just withdraw the
23 questions.

24 THE COURT: Okay. What are you going to ask next so
25 I can just be sure there are no objections before I bring the

1 jury back in?

2 MR. TILLER: I am going to ask about the stamped
3 document that's already in evidence and just ask him to look at
4 a few points of that.

5 THE COURT: The --

6 MR. TILLER: DX 17.

7 THE COURT: Okay.

8 MR. TILLER: And I'm going to ask him about whether
9 he believes the condensation reaction, as described in that
10 document, can actually be done without DABCO and then I will be
11 done.

12 MR. SANTHANAM: This may lead into the Daubert motion
13 that we -- excuse me, the motion in limine that we made, Your
14 Honor, that we discussed at the June 2nd conference about
15 commercial reasonableness.

16 MR. TILLER: Your Honor, I'll tell you exactly what
17 he is going to do.

18 THE COURT: Well, just a second. Let me remember
19 what I did on commercial reasonableness and Dr. Lipton. This
20 is why I write things down. So is it in the order I entered on
21 July 28th? Cannot testify, Doc 201. I just have to lay my
22 hands on that. This is the order that I entered signed
23 June 16th. I don't understand how that doesn't -- Mr. Tiller,
24 I say here Willowood may not offer expert testimony on
25 commercial reasonableness at trial.

1 MR. TILLER: Your Honor, I can point you directly to
2 what Dr. Lipton -- what I propose to ask of him. It's in his
3 expert report. I can hand you a page of it.

4 THE COURT: Okay.

5 MR. TILLER: Or I can hand it to you. It is in his
6 expert report dated September 12th, 2016. It is specifically
7 Part 10. Again --

8 THE COURT: Just hand it to me and let me look at it.

9 MR. TILLER: It's just a few paragraphs, Your Honor.

10 (Document handed to the Court.)

11 THE COURT: Okay. So I apologize. Can you back up
12 and tell me what you said you were going do again?

13 MR. TILLER: I'm going to have him testify as to what
14 is set forth in paragraphs 38 through 43 of this report and he
15 is not testifying to the commercial reasonableness. What he is
16 doing is just doing some -- actually, just doing some basic
17 math calculations to show that what is described in the stamped
18 document is possible.

19 THE COURT: Okay. And your objection to that is
20 what?

21 MR. SANTHANAM: Your Honor, to the extent that he's
22 commenting or is going to opine on whether this can be done
23 commercially to manufacture azoxystrobin, that goes to
24 commercial reasonableness. That's the only relevance that this
25 could possible have.

1 THE COURT: Well --

2 MR. SANTHANAM: At commercial scale.

3 THE COURT: I'm not sure that that's really true,
4 that it's only relevant to that.

5 What are you offering it for?

6 MR. TILLER: I'm offering it to show that what is
7 described in --

8 THE COURT: Yeah, I know.

9 MR. TILLER: -- what is described can actually happen
10 within --

11 THE COURT: Why is that relevant?

12 MR. TILLER: -- to show that it can happen within two
13 hours without DABCO. It's relevant to show we're not just
14 making -- Tai He is not just making something up that doesn't
15 work.

16 THE COURT: Uh-huh.

17 MR. TILLER: That is it possible.

18 THE COURT: So you are offering it to corroborate the
19 testimony that this is the actual process that was used?

20 MR. TILLER: Yes.

21 THE COURT: Okay. I guess that seems reasonable to
22 me.

23 MR. SANTHANAM: Well, to the extent that he's going
24 to opine that this can be done at commercial scale and that Tai
25 He can commercially do this --

1 THE COURT: Well, he's not an expert in that, so he's
2 not going to be testifying about that.

3 MR. SANTHANAM: If that's the case, then we withdraw
4 our objection.

5 MR. TILLER: I'm going to ask -- okay.

6 THE COURT: I mean, his expertise is in chemistry,
7 not in commercial production, right?

8 MR. TILLER: He is not a process chemist. Yes, I
9 agree with that. He said that.

10 THE COURT: Okay. Well, you know, I'll just rule --
11 if there's problems during his testimony, I'll just rule on
12 them, but now that you all have explained it to me and I have
13 it in the front of my mind, I think we're ready to go forward.

14 Okay. You can bring the jury back in.

15 I'm going to charge each of you all with half of that
16 time since I kind of split the baby. She's been charging the
17 time to the loser on these evidentiary objections.

18 (Jury panel is present.)

19 THE COURT: All right. I'm sorry about that, ladies
20 and gentlemen. I think we worked through everything for this
21 witness, at least for the direction examination.

22 Mr. Tiller, you can go ahead.

23 MR. TILLER: Nothing further, Your Honor.

24 THE COURT: Nothing further. All right.

25 Cross-examination.

1 MR. SANTHANAM: Yes, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. SANTHANAM:

4 Q. Good afternoon, Dr. Lipton.

5 A. Good afternoon.

6 Q. Now, you mentioned that you're a chemist. I would like to
7 talk a little bit about your background. Now, throughout your
8 career, you would agree you've never worked on commercializing
9 any agricultural chemicals?

10 A. That's correct.

11 Q. And you've never been involved in the sale or marketing of
12 any agriculture chemicals?

13 A. No.

14 Q. You wouldn't call yourself an expert in the sale or
15 marketing of agricultural chemicals?

16 A. No.

17 Q. You wouldn't call yourself an expert in the market for
18 pesticides, right?

19 A. No.

20 Q. And you've never been involved in applying for or
21 obtaining EPA registrations for agricultural chemicals,
22 correct?

23 A. That is true.

24 Q. And you wouldn't consider yourself an expert in EPA
25 procedures and policies and practices, correct?

1 A. That is also true.

2 Q. Now, you talked a little bit about processes for making
3 azoxystrobin and I want to make sure we've got the terminology
4 straight. When you make a chemical compound, that process is
5 called synthesis right?

6 A. That is true.

7 Q. You sometimes call that a synthetic procedure, is that
8 right?

9 A. That's true.

10 Q. The term "scaling up" applies to when you take a process
11 that might work on a laboratory scale for a beaker or a test
12 tube full of material and taking it to a commercial scale to
13 make large quantities of it, right?

14 A. Yes.

15 Q. And, for example, if you want to take a process for making
16 azoxystrobin and making -- and it works on small scale or on
17 paper and you want to make commercial quantities of it, you're
18 going to have to scale it up, right?

19 A. That is true.

20 Q. And to be very precise, when you're making metric tons of
21 azoxystrobin, you're going to need a commercial scale process,
22 isn't that right?

23 A. Yes.

24 Q. And the reason you need do the scale-up is because
25 sometimes when processes work on small scale, on the bench top

1 in a test tube, they don't always work as well as you want at
2 large scale, isn't that right?

3 A. That is certainly one possibility.

4 Q. And the --

5 MR. TILLER: Your Honor, I'm sorry. Can we approach?

6 THE COURT: Okay.

7 (Bench conference as follows:)

8 MR. TILLER: Your Honor, the sole -- all Dr. Lipton
9 testified to was to the validity or the obviousness of the '761
10 patent.

11 THE COURT: If he's going to ask him about commercial
12 scale stuff, you can ask him about it. I mean, all I was -- I
13 was not going to let you do it, but now he's doing it, so --

14 MR. TILLER: But I didn't do it.

15 THE COURT: Well, that's true.

16 MR. TILLER: I mean, that's the point is I didn't do
17 it, and so it would be on the --

18 MR. SANTHANAM: The point is he doesn't have the
19 experience.

20 THE COURT: How can he testify about it?

21 MR. SANTHANAM: Well, he testified about being able
22 to take a patent related to commercial manufacturing and saying
23 I'm applying it, this is obvious, et cetera.

24 MR. TILLER: Your Honor, whether a patent method --
25 whether a method that is patented is commercially reasonable or

1 can be scaled up is absolutely irrelevant to the issue of
2 validity and obviousness. That has nothing to do with it. All
3 you do is you look at what's in prior art and determine whether
4 a --

5 THE COURT: Isn't that right?

6 MR. SANTHANAM: Well, no, not necessarily because
7 he's saying -- well, you know, the use of the catalyst, he's
8 saying, you know, you're going to want to make your
9 manufacturing process as efficient as possible. You're going
10 to want to make it as least expensive as possible. He went
11 through factors about why he wouldn't want to use too much
12 catalyst. Well, I'm entitled to ask questions about his lack
13 of expertise in --

14 THE COURT: Okay. Well, focus your questions on his
15 testimony because I don't feel, you know -- to the extent you
16 focused on what the Defendant presented, I'll let you
17 cross-examine him, but let's -- you know, you all are running
18 out of the time. I'm not running out of time, but you all are
19 running out of time. Every single one of these conferences is
20 taking time off of your time. I just want to make sure that
21 you all understand that.

22 (Bench conference concluded.)

23 THE COURT: Go ahead.

24 BY MR. SANTHANAM:

25 Q. Dr. Lipton, before I ask you some questions about the

1 azoxystrobin compound that you addressed, you would agree
2 you're not a process chemist?

3 A. That is correct.

4 Q. Now, you mentioned that you were looking at, for example,
5 the '761 patent and you were looking at the azoxystrobin
6 compound, and I would like to talk a little bit about the
7 azoxystrobin compound.

8 MR. SANTHANAM: Now, if we could put up --

9 BY MR. SANTHANAM:

10 Q. Well, first of all, before we get there, your opinion is
11 that you believe that the '761 DABCO patent -- the claims of
12 the '761 DABCO patent are invalid as obvious based on the
13 Weintritt reference, is that right?

14 A. Yes, it is.

15 Q. Now, Dr. Lipton, you were retained by Willowood's counsel
16 in this case, is that right?

17 A. That is correct.

18 Q. You were retained approximately June -- May or June of
19 last year, 2016, is that right?

20 A. I would have to go and check. That may be correct, yes.

21 Q. To best of your recollection, you were retained May or
22 June of last year?

23 A. It is consistent with what I recall, yeah.

24 Q. And, Dr. Lipton, at the time you were retained, you were
25 provided by Willowood's counsel with a claim chart relating to

1 the invalidity of the '761 patent, is that right?

2 A. I believe I was provided that sometime after I was
3 retained.

4 Q. Sometime after you were retained. But you would agree
5 with me that you did not prepare that chart?

6 A. I did not prepare the whole of the chart. I don't
7 remember if I made modifications to it.

8 Q. Well, the chart that counsel provided you at beginning of
9 your retention, you did not author that chart, correct?

10 A. No, I did not.

11 Q. Just so that we're all clear as to what was in this chart,
12 that chart had one column that had the '761 patent claims. Do
13 you recall that?

14 A. Yes, I do.

15 Q. And then the other column, it had what was called bases
16 for invalidity. Do you recall that?

17 A. Yes, I do.

18 Q. And the bases for invalidity set forth -- and this is the
19 chart that counsel provided you. You would agree it set forth
20 bases for invalidity based on the Weintritt reference, correct?

21 A. Yes.

22 Q. And you adopted this claim chart that Willowood's counsel
23 provided to you and was created before you even became involved
24 in this case, isn't that right?

25 A. No. I don't know that is correct. I don't know the

1 timing precisely. I may have used the chart sometime after I
2 was retained.

3 Q. Dr. Lipton, you adopted a claim chart setting forth
4 invalidity bases that counsel had prepared before you were even
5 retained in this matter, is that right?

6 A. I believe they did prepare the chart before I was
7 retained, but I don't really know.

8 Q. Well, let me refresh your recollection and if you turn --

9 MR. SANTHANAM: Your Honor, we have binders prepared.
10 If I may approach.

11 THE COURT: All right.

12 MR. SANTHANAM: I'm handing the witness a trial
13 binder.

14 BY MR. SANTHANAM:

15 Q. Dr. Lipton, if you could flip over to the last tab in that
16 binder. It should contain your deposition transcript. You did
17 testify at a deposition in this case, correct?

18 A. Yes.

19 Q. At that deposition you were under oath?

20 A. Yes, that's correct.

21 Q. And you were asked questions by me?

22 A. That is correct.

23 Q. Your counsel, Mr. Davis and Mr. Tiller, were present
24 there?

25 A. That is correct.

1 Q. Now, if I could direct you in this deposition transcript
2 all the way to page 39.

3 A. Are you referring to the page number at the bottom or the
4 page number in the --

5 Q. In the boxes, please.

6 A. In the boxes. Okay.

7 Q. I direct you to the top portion of page 39.

8 A. All right.

9 Q. Dr. Lipton, you adopted a claim chart setting forth
10 invalidity bases that counsel had prepared before you were even
11 retained in this matter, correct?

12 THE COURT: What are you asking him? Are you asking
13 him that question independently?

14 MR. SANTHANAM: Yes, yes. I'm just refreshing his
15 recollection because he said he didn't remember.

16 THE COURT: Okay.

17 A. Well, based on this transcript, it appeared I agreed with
18 you at that time.

19 Q. Now, Dr. Lipton, the chart that counsel provided to you
20 set forth the bases for invalidity based on the Weintritt
21 reference, correct?

22 A. Yes.

23 Q. And you're here today testifying that the claims of the
24 '761 DABCO patent are invalid based on the '761 Weintritt
25 reference, correct?

1 A. That is correct.

2 Q. You're being compensated in this matter?

3 A. Yes, I am.

4 Q. You're being compensated in this matter at a rate of \$400

5 an hour, is that right?

6 A. That is correct.

7 Q. That includes the time you're spending testifying here

8 today, correct?

9 A. That is also correct.

10 Q. Let's talk a little bit about the Weintritt reference and,

11 you know, in particular you said that -- I believe the

12 testimony you gave was that Weintritt disclosed the synthesis

13 of azoxystrobin, is that right?

14 A. That is correct.

15 Q. Now, you understand that Weintritt has a number of

16 examples in it, correct?

17 A. Yes.

18 Q. There are five examples?

19 A. I believe there is more than that.

20 Q. Well, why don't we walk through those examples. If you

21 could turn to the binder in front of you, the white binder, the

22 very first tab is the Weintritt reference, DX-6. I believe

23 that was already entered into evidence. And if I could direct

24 you to Example 1. It's on page 8.

25 A. Yes.

1 Q. And on page 8 --

2 MR. SANTHANAM: And, David, if you could blow up
3 there on paragraph 138.

4 BY MR. SANTHANAM:

5 Q. Now, that's the compound that's being discussed in Example
6 1?

7 A. Yes, that is.

8 Q. And that's not azoxystrobin, is it, Dr. Lipton?

9 A. No, it's not.

10 Q. Let's go on to Example 2. David, if you could go to page
11 9, and we can blow up the figure on paragraph 145.

12 And, Dr. Lipton, that's the compound that's being
13 discussed in Example 2, correct?

14 A. That is correct.

15 Q. And you'd agree with me that that's not azoxystrobin?

16 A. That is also true.

17 Q. Let's go to Example 3. It's on the second column there.
18 If you could blow up, David, paragraph 152.

19 That's what's being discussed in Example 3, correct?

20 A. That is correct.

21 Q. You would agree with me that that is not azoxystrobin?

22 A. That is also true.

23 Q. Let's go to Example 4. David, if you could blow up
24 paragraph 159. That's the compound in paragraph 159 that's
25 being addressed in Example 4, right?

- 1 A. That is correct.
- 2 Q. That's not azoxystrobin, is it?
- 3 A. No, it's not.
- 4 Q. And then Example 5, same page -- David, if you could blow
- 5 up paragraph 163.
- 6 And Dr. Lipton, that's what's being addressed in
- 7 Example 5, isn't that right?
- 8 A. That is correct.
- 9 Q. That's not azoxystrobin?
- 10 A. That is also true.
- 11 Q. And you'd agree with me that those are the only five
- 12 examples that are found in the Weintritt reference?
- 13 A. Those are the only five examples in the specifications;
- 14 but, of course, the claims are broader than the specifications.
- 15 Q. We'll get to the claims. But the only five examples are
- 16 the five that we went through, correct?
- 17 A. Yes.
- 18 Q. None of those examples even describe azoxystrobin,
- 19 correct?
- 20 A. No.
- 21 Q. None of them describe syntheses or processes for making
- 22 azoxystrobin, isn't that right?
- 23 A. That is true.
- 24 Q. All right. Well, let's talk a little bit about the claim
- 25 that you addressed.

1 MR. SANTHANAM: David, if we could pull up the
2 demonstrative that Dr. Lipton used. I believe it was
3 Defendant's Demonstrative Exhibit 1.

4 BY MR. SANTHANAM:

5 Q. And, Dr. Lipton, you recall talking about those before,
6 correct?

7 A. Yes.

8 Q. And I believe the statement that you made was, this could
9 represent many molecules?

10 A. Yes.

11 Q. And that this is a generic structure?

12 A. Yes.

13 Q. And you walked us through -- if you can flip through the
14 slides a little bit. You walked us through and you said, well,
15 one of those molecules is azoxystrobin. Do you recall that?

16 A. I do, yes.

17 Q. Okay. Well, let's go back to that first slide of this
18 demonstrative. Now, you'd agree with me that in this generic
19 structure, all of these different variables, L1, L2, L3, L4, L5
20 X and Ar1, that all of those could be substituted for a number
21 of different groups, correct?

22 A. That is the intent, yes.

23 Q. All right. Well, let's talk about that.

24 MR. SANTHANAM: Your Honor, permission to use the
25 flip chart?

1 THE COURT: Okay.

2 BY MR. SANTHANAM:

3 Q. Let's talk about L1. Now, you selected one particular
4 option for L1, but if you take a look at the Weintritt
5 reference in front of you, Dr. Lipton, I'd direct you to page
6 11.

7 MR. SANTHANAM: And David, if we could go to page 11
8 of Weintritt just briefly. If we could blow up the fourth full
9 paragraph from the top on the left-hand side.

10 BY MR. SANTHANAM:

11 Q. And, Dr. Lipton, on that paragraph that says, you know,
12 L1, L2, L3 and L4 are identical or different, do you see that?

13 A. Yes, I do.

14 Q. And it says that they can be any number of different
15 options, correct?

16 A. That is correct.

17 Q. And so let's count these out, just for the benefit of the
18 jury. There's hydrogen. Do you see that, that's No. 1?

19 A. Yes.

20 Q. No. 2 is halogen. Do you see that, that's No. 2?

21 A. Yes.

22 Q. Cyano is No. 3?

23 A. Yes.

24 Q. Nitro's No. 4?

25 A. Yes.

- 1 Q. Alkyl carbonyl is No. 5?
- 2 A. Yes.
- 3 Q. Formyl is No. 6?
- 4 A. Yes.
- 5 Q. Alkoxy carbonyl, that's No. 7?
- 6 A. Yes.
- 7 Q. Aminocarbonyl, that's No. 8?
- 8 A. Yes, indeed.
- 9 Q. Alkyl aminocarbonyl is No. 9?
- 10 A. Yes.
- 11 Q. And dialkyl aminocarbonyl is No. 10. Do you see that?
- 12 A. Yes, I do.
- 13 Q. There are at least 10 different substituents or groups for
- 14 this -- for these four; L1, L2, L3 and L4, correct?
- 15 A. That's correct.
- 16 Q. It doesn't stop there, right? It also says that each of
- 17 these groups can be optionally substituted, right?
- 18 A. Yes, it does.
- 19 Q. And, in fact, it gives you an alkyl, that's No. 1,
- 20 correct?
- 21 A. A halogen-substituted alkyl.
- 22 Q. Okay. And it could be a halogen-substituted alkoxy;
- 23 that's No. 2, correct?
- 24 A. It's not -- I guess -- I guess that's the proper reading,
- 25 although it's not clear if halogen-substituted modifies only

1 the first member or the whole list.

2 Q. Okay. What is your understanding?

3 A. Honestly it's not at all clear from the way it's written.

4 Q. Well, it mentions alkyl, alkoxy, alkylthio, alkylsulphinyl
5 and alkylsulphonyl. There's five different options that are
6 mentioned, correct?

7 A. That's correct.

8 Q. And each of those could be a potential substitution for
9 the 10 that we talked about, right?

10 A. Well, the way this is written, I think what they're saying
11 is that the alkyl groups in the various names can be optionally
12 one of those items.

13 Q. Correct. And so there are five different options, isn't
14 that right?

15 A. Yes. But those five different options -- for instance,
16 there is no substitution possible in hydrogen or on a halogen,
17 so clearly that doesn't apply to them.

18 Q. Well, there's at least five, correct?

19 A. Yeah.

20 Q. And so conservatively speaking, you can say that, given
21 that there are other substitutions you can make, L1 could be at
22 least 50 different groups, isn't that right?

23 A. That's true.

24 Q. And that applies to L2, correct?

25 A. Certainly.

1 Q. That applies to L3, correct?

2 A. Yes.

3 Q. That applies to L4, correct?

4 A. That is true.

5 Q. And then there's this other group in here.

6 MR. SANTHANAM: David, if we go -- flip back to
7 Demonstrative Exhibit 1, Defendant's.

8 BY MR. SANTHANAM:

9 Q. You've got this group X. Do you see that?

10 A. I do.

11 Q. And in the Weintritt patent, that refers to four different
12 possibilities, isn't that right?

13 A. I believe that's the case, yes.

14 Q. And then there's also L5, isn't there, Dr. Lipton?

15 A. Yes, there is.

16 Q. And in the Weintritt reference, there are -- you can count
17 them, but there are 13 different possibilities, isn't that
18 right?

19 A. That looks right.

20 Q. And we haven't even gotten to the Ar superscript 1 yet,
21 correct?

22 A. That's true.

23 Q. Now, in order to figure out just the number of
24 possibilities that we've got, you multiplied 50, times 50,
25 times 50, times 50, times 13, times 4, correct?

1 A. That looks correct, yeah.

2 MR. SANTHANAM: I do have a calculator and, Your
3 Honor, if I may approach?

4 THE COURT: You may.

5 BY MR. SANTHANAM:

6 Q. And hand you a calculator, Dr. Lipton. Would you multiply
7 those numbers out for us.

8 A. The number I get is 325 million.

9 Q. 325 million. That doesn't include the aryloxy group?

10 A. That's correct.

11 Q. If you look at Ar1 superscript on page 11, I'll direct you
12 to page 11 -- let me know when you're there.

13 A. I'm there.

14 Q. The Ar1 group -- and, David, if we can blow this up,
15 that -- the Weintritt reference.

16 The Ar1 group represents in each case substituted or
17 unsubstituted aryl or heterocycl? Do you see that?

18 A. I do.

19 Q. Approximately how many substituted or unsubstituted aryl
20 or heterocycl groups do you think there are?

21 A. It's literally uncountable.

22 Q. Uncountable? Billions?

23 A. Possibly.

24 Q. Quadrillions?

25 A. Well, not all of them have ever been made so, you know, we

1 do have a finite limit, but it's a large number.

2 Q. Whatever that number is, if you want to figure out what
3 the possibilities are, you'd have to multiply 325 million by
4 that, right?

5 A. Yes, indeed.

6 Q. Do you think the calculator in front of you would be able
7 to register all of those digits?

8 A. Probably not; probably have to revert to scientific
9 notation.

10 Q. And out of all -- if we can flip back to Plaintiff's
11 Demonstrative Exhibit 1. And out of all of those quadruplings,
12 quintillions of possibilities, you picked -- go to the last
13 line, azoxystrobin?

14 A. Yes. It's not a hard thing do, since the azoxystrobin
15 side chain is, in fact, the first one listed, and all the
16 others are variations on the azoxystrobin side chain.

17 Q. The azoxystrobin that you picked, Dr. Lipton, was among
18 billions, quadrillions or quintillions of possibilities, isn't
19 that right?

20 A. Yes. They wrote a very broad patent and got away with it.

21 Q. And, Dr. Lipton, is it your -- is it your opinion that the
22 use of DABCO in manufacturing any one of these billions and
23 quadrillions and quintillions of compounds would have the same
24 effect?

25 A. I think it would likely have a very similar effect in

1 almost all cases.

2 Q. Now, Dr. Lipton, you mentioned earlier that you had looked
3 at the prosecution history of the Weintritt reference, is that
4 right?

5 A. Yes.

6 MR. SANTHANAM: And before I move on, I'm going to
7 mark this as Plaintiff's Demonstrative 26.

8 THE COURT: What was the number?

9 MR. SANTHANAM: Twenty-six.

10 BY MR. SANTHANAM:

11 Q. You had indicated you're familiar with the prosecution
12 process, is that right?

13 A. Yes.

14 Q. And as part of that prosecution process, Dr. Lipton, the
15 patent applicant, such as Dr. Alan Whitton sitting here, would
16 submit an application to the patent office, correct?

17 A. Yes.

18 Q. And the patent office typically doesn't allow a patent,
19 isn't that right?

20 A. That is true.

21 Q. It goes through a back-and-forth process before it's
22 ultimately issued, isn't that right?

23 A. That is correct.

24 Q. And you noted that in this instance, the patent office
25 considered the Weintritt reference, is that right?

1 A. That's true.

2 Q. And that's because the inventors of this '761 DABCO
3 patent, Dr. Whitton sitting here, submitted the Weintritt
4 reference to the patent office, isn't that right?

5 A. That is true.

6 Q. And, in fact, the patent office you said substantively
7 considered the Weintritt reference, is that right?

8 A. In their initial objection, they cited it.

9 Q. Okay. And we went through a number of different papers in
10 the file history, specifically one of them that you pointed
11 out. I'd like to direct you to some additional papers in that
12 same exhibit, and I'm referring now to Defendant's Trial
13 Exhibit No. 5, which was in evidence.

14 THE COURT: It's in the black notebook?

15 MR. SANTHANAM: In the black notebook, Your Honor.

16 BY MR. SANTHANAM:

17 Q. And if we can turn to -- this is the 10th page of this
18 document. You're familiar with what's called a notice of
19 allowability, is that right, Dr. Whitton -- excuse me, Dr.
20 Lipton?

21 A. Yes, I am.

22 Q. If we can go the top of the statement and blow that up. A
23 notice of allowability indicates that the patent office has
24 considered whatever prior art was before it and has decided to
25 allow a patent, isn't that right?

1 A. Well, they have allowed the patent, yes.

2 Q. Okay. And after this notice of allowability, if we go to
3 two pages -- or several pages before, there's something called
4 a notice of allowance. Do you see that?

5 A. I do.

6 Q. And the notice of allowance is the indication by the
7 patent office that they're formally going to allow the claims
8 of the DABCO patent, correct?

9 A. That's true.

10 Q. And the very first page of this document that you looked
11 at says issue notification. Do you see that?

12 A. I do.

13 Q. And that -- what that means is that the patent office
14 ultimately issued this patent, correct?

15 A. That's correct.

16 Q. And you've received patents before, correct?

17 A. I have.

18 Q. So you're aware of what the front cover of a patent looks
19 like?

20 A. Yes.

21 Q. And for the record, I'm holding up Plaintiff's Exhibit 4B,
22 and on the front cover of that patent, you're familiar with the
23 language, correct?

24 A. Yes.

25 Q. It says, "Grants to persons having title to this patent

1 the right to exclude others from making, using, offering for
2 sale or selling the invention throughout the United States of
3 America or importing the invention into the United States of
4 America." Do you recall that language in patents?

5 A. Yes.

6 Q. Now, Dr. Lipton, one comment that you made at the end of
7 your direction examination was, you had -- in order for this
8 DABCO patent to be invalid, you would have to be right,
9 correct?

10 A. That's true.

11 Q. And not only that, but Dr. Alan Whitton, and the named
12 inventors of the DABCO patent, would have to be wrong that they
13 invented something, correct?

14 A. No.

15 Q. Do you believe that they invented something?

16 A. Well, they developed a process; whether it was not obvious
17 is another question entirely.

18 Q. And you believe that the named inventors, Dr. Alan Whitton
19 and the other named inventors, were wrong that they had come up
20 with a non obvious invention, correct?

21 A. Well, I don't know what he believed, so I can't really
22 comment on that.

23 Q. And you testified that the patent office would have to be
24 wrong in its issuance of the '761 DABCO patent?

25 A. Yes, I believe the patent examiner's decision was wrong.

1 MR. SANTHANAM: No further questions, Your Honor.

2 THE COURT: Redirect?

3 REDIRECT EXAMINATION

4 BY MR. TILLER:

5 Q. Of the 325 million potential compounds that is covered by
6 the Weintritt application, one of them is most certainly
7 azoxystrobin, correct?

8 A. That is true.

9 Q. Now, looking at the '138 patent, which I believe, if
10 I -- or at least the publication -- I think it's DX-6.

11 THE COURT: Well, sustained.

12 MR. SANTHANAM: Your Honor, objection, beyond the
13 scope.

14 THE COURT: He didn't ask any questions about the
15 '138 patent.

16 MR. TILLER: Well -- let me -- may I approach then?

17 THE COURT: Well, you can just ask different
18 questions if you -- if there's some other way to get to it, but
19 you can't --

20 MR. TILLER: No, Your Honor, there isn't. There's a
21 specific reason and we're --

22 THE COURT: Okay. Come on up.

23 MR. TILLER: -- I'm sorry.

24 (Bench conference held as follows:)

25 MR. TILLER: The implications of the questions with

1 regard to Weinritt where there -- there's so many compounds
2 that a person of ordinary skill in the art wouldn't have found
3 azoxystrobin, but part of his opinion is that one would start
4 with the '138 patent and then look at Weinritt in light of
5 that, so I need to show that he -- that you can look at the
6 '138 patent and one of the claims is directly azoxystrobin.

7 THE COURT: Which I think he said, right; didn't he
8 mention that on cross?

9 MR. TILLER: I think he did.

10 MR. SANTHANAM: I don't recall that.

11 THE COURT: Well, okay. He said something about it
12 being directly listed. All right. You can do that.

13 MR. TILLER: Thank you.

14 (Bench conference concluded.)

15 THE COURT: Go ahead.

16 BY MR. TILLER:

17 Q. Could we take a look at the '138 patent, Dr. Lipton, which
18 I believe again is PX-3.

19 A. Yes.

20 Q. And I want you to specifically -- could we get the toggle
21 of it --

22 THE COURT: I'm sorry, what?

23 MR. TILLER: We needed the toggle, so we could show
24 the '138 patent. Could we go to, Bonnie, Claim 6. I believe
25 it's Claim 6, which is on column 28. Specifically Claim 6.

1 It's about halfway down.

2 BY MR. TILLER:

3 Q. Dr. Lipton, does that claim cover the preparation of
4 azoxystrobin.

5 A. Yes, it does.

6 THE COURT: Has she highlighted the right part?

7 MR. TILLER: Yes.

8 THE COURT: I'm asking the witness.

9 THE WITNESS: Yes, she has.

10 THE COURT: All right. Go ahead.

11 BY MR. TILLER:

12 Q. And, in fact, is it -- what is your understanding of the
13 point made by the patent examiner with regard to the '138
14 patent and Weintritt?

15 A. What I understand the patent examiner initially stated was
16 that in light of the combination of the two, the '761 patent
17 was considered invalid.

18 Q. Is one of your positions -- is it your position that a
19 person of ordinary skill in the art looking at starting with
20 the '138 patent would have known about Weintritt?

21 THE COURT: I'm sorry, can you start over again.

22 MR. TILLER: Yes.

23 BY MR. TILLER:

24 Q. '138 covers the synthesis of azoxystrobin, correct?

25 A. That's correct.

1 Q. And is Weintritt disclosing the synthesis of similar
2 compounds?

3 A. Yes, it is.

4 Q. Okay. So is Weintritt analogous art to what is disclosed
5 in the '138 patent?

6 A. It is with the caveat that it introduces the concept of
7 catalysis by DABCO in the condensation step.

8 Q. Understood. And '138, in fact, has the concept of
9 catalysis in it, correct?

10 A. That's correct.

11 Q. Okay. And -- strike that. There was some discussion
12 about an invalidity chart. Do you remember that when
13 Mr. Santhanam was asking you questions?

14 A. Yes, I do.

15 Q. Is the opinion that you offered here today your opinion?

16 A. Yes, it is.

17 Q. Did you review the '138 patent in forming your opinion?

18 A. Yes, I did.

19 Q. Did you review the Weintritt application in forming your
20 opinion?

21 A. Yes, I did.

22 Q. Did you do additional research in forming your opinion?

23 A. Yes, I did.

24 Q. Did you rely on your 30-plus years of organic chemistry
25 experience in forming your opinion?

1 A. Yes.

2 Q. Is your opinion based solely on the invalidity chart that
3 was provided to you by counsel?

4 A. No.

5 Q. Would a person of ordinary skill in the art charged with
6 improving the process that is disclosed in the '138 patent,
7 would it have been -- would that person have looked to
8 Weintritt for guidance?

9 A. After the publication of Weintritt, yes, I think so.

10 Q. Going back to the claim chart that was provided to you by
11 counsel, is your opinion based at all on that claim chart?

12 A. No, it's not.

13 MR. TILLER: Thank you. Nothing further, Your Honor.

14 THE COURT: Anything else on the topics covered in
15 redirect?

16 MR. SANTHANAM: No, Your Honor.

17 THE COURT: Thank you. You may step down.

18 (At 4:20 p.m., witness excused.)

19 THE COURT: Let me just whisper with counsel about
20 scheduling for a minute here at the bench.

21 (Bench conference as follows:)

22 THE COURT: Mr. Tiller, you said you have -- the only
23 other witness you have is Mr. Jarosz?

24 MR. TILLER: Yes.

25 THE COURT: And we're going to get to him in the

1 morning?

2 MR. TILLER: He's here, but he hasn't -- like, we
3 haven't -- we don't have all the witness binders put
4 together -- because we didn't think we were going go this fast.
5 I apologize for that. So the witness binders aren't together.
6 We haven't sent -- the agreement between counsel has been to
7 send demonstratives by 7:00 the night before, and we intend on
8 doing that obviously --

9 MR. LEVINE: We can waive that and have him get
10 started --

11 THE COURT: Well, is there any reason not to do his
12 background, at least that?

13 MR. TILLER: (Inaudible.)

14 THE COURT: All right. Well, I'm going to take the
15 40 minutes off your time.

16 MR. TILLER: What are we at right now?

17 THE COURT: I don't know.

18 THE LAW CLERK: Eleven hours and 20 minutes.

19 MR. TILLER: I guess there's nothing we can do about
20 that.

21 THE COURT: Okay.

22 (Bench conference concluded.)

23 THE COURT: Okay. Ladies and gentlemen, there's --
24 Willowood has one more witness, and we're going to do that in
25 the morning, and I do expect that we will either finish the

1 evidence tomorrow or come extremely close. So we're moving
2 along, I think, at the schedule that is expected.

3 Even though you have heard a lot of the evidence, you
4 have not heard it all, so you do need to keep an open mind, and
5 continue not to talk about the case among yourselves or with
6 anyone else. Don't have any contact with the lawyers, parties,
7 or witnesses. And I keep repeating it, but it is really
8 important. Don't look anything up on the internet, okay. The
9 internet is not right about a lot of stuff. So please don't
10 look anything up there or conduct any independent investigation
11 otherwise.

12 And given that we are supposed to get a lot of rain
13 and some wind, we're going to start at 9:30 in the morning.
14 I'm just going to give you a little bit of extra time to get
15 here rather than starting at 9:15, and I don't think that will
16 hold us up too much tomorrow. So I will see you all tomorrow
17 at 9:30. You are excused. Leave your notes in your chair.

18 (Jury excused.)

19 THE COURT: All right. So we'll count the time,
20 Ms. Sanders, in case you did not hear, between now and 5:00
21 against Willowood's time. We'll do Mr. Jarosz in the morning.
22 After that, what does Syngenta expect?

23 MR. LEVINE: We will have a couple of rebuttal
24 witnesses, Your Honor, but we do have limited time, and we
25 should be able to get them all on tomorrow.

1 THE COURT: Okay. Good. It would be nice just from
2 a logistical standpoint to have a little time tomorrow
3 afternoon to talk about the charge conference. But, you know,
4 you all are entitled to all your time. So I'm not trying to
5 make you use less. I think we'll check with the clerk at the
6 end of day about the time, but I think we should be able to
7 finish tomorrow, even if you use every single minute, okay.

8 Any other housekeeping matters we can take care of?

9 MR. LEVINE: Just to make sure we're on the same page
10 then. So once the evidence is in, you're going to have an
11 informal conference with us regarding the instructions, and
12 then you'll provide us with the so-called final set by e-mail.
13 We'll have the evening and come in -- is it Wednesday morning
14 for closings, or do you want to do closings tomorrow afternoon?

15 THE COURT: Well, I guess it kind of depends on when
16 you all rest, when everybody finishes all of the evidence, but
17 I'm -- I expect the charge conference is going take us some
18 time, it usually does in a civil case, and we have -- assuming
19 I leave all the issues in the case, we've got ten, so it's kind
20 of hard for me to imagine that you would get to closing
21 arguments tomorrow. How long do you think Mr. Jarosz is going
22 to take?

23 MR. NEUMAN: I expect no longer than an hour and 15
24 minutes.

25 THE COURT: Is that your direct?

1 MR. NEUMAN: Direct.

2 THE COURT: Okay. I mean, I guess, you know -- I
3 will say, I don't usually give the jury the written
4 instructions right off the bat. I only send them back there if
5 they ask for them. So they -- you know, they really don't have
6 to be perfect at the time of your closing arguments in terms of
7 no typos. But, you know, I do like to have them pretty much
8 worked through, and I guess how long it takes really kind of
9 depends on you all's objection, but there were a number of
10 areas of disagreement. It's very hard for me to imagine we get
11 to closings tomorrow. But if Syngenta didn't put on any
12 rebuttal evidence, I suppose that could happen.

13 MR. LEVINE: We will, though.

14 THE COURT: So, you know, my expectation is we'll be
15 here first thing Wednesday morning with the closings, unless
16 something very unexpected happens tomorrow.

17 And, you know, what you have laid out is certainly
18 what I expect to happen. But, you know, if we go until 5:00
19 with the evidence, we're not going to have time for that
20 process necessarily. So we might have to modify it a little
21 bit. So, you know, we just have to be flexible about the
22 charge conference. I'll give you a full charge conference,
23 whether we do it in two stages or one.

24 Okay. What else can we do productively today?

25 Nothing. All right. We will be in recess then until 9:30

1 tomorrow morning.

2 (At 4:25 p.m., proceedings adjourned.)

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1 C E R T I F I C A T E
23 I, J. CALHOUN, RPR, United States District Court
4 Reporter for the Middle District of North Carolina, DO HEREBY
5 CERTIFY:6
7 That the foregoing is a true and correct transcript of
8 the proceedings had in the above-entitled matter.9
10
11 Date: 9-11-17
12 J. Calhoun RPR
13 United States Court Reporter
14 324 W. Market Street
15 Greensboro, NC 27401
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